

gone over by petroleum engineering experts or geologists to the extent that you have a reasonable idea as to their potential oil values?

A. A good deal of the acreage is on structure. They have not been drilled to determine the absolute presence of oil, but we bought it or leased it on structure.

Q. Have you any production on any of it?

A. No.

Q. In making up your inventory you carry that on your books, do you not?

A. This land?

Q. Yes.

A. Yes.

Q. A while ago you testified that your Company made something like two and a half per cent last year. I would construe that you meant that on all of your capital investment?

A. Yes, sir.

Q. This land—this two and a half million acres of land, do you carry that land on there at what you paid for it, or its estimated value?

A. All our property is carried at cost; no matter what it is, it is on our books at cost, except our oil, which is carried at the market price; any other property we have is carried at cost, except the oil.

Senator DeBerry: I thank you.

Senator Woodward: For myself and I am sure for every member of the Committee, I wish to state that we are deeply grateful to Mr. Holmes for his great patience, and the thorough manner in which he has answered the questions propounded him.

The Chairman: I was just going to express for the committee and myself, personally, our gratitude for the consideration and patience with which he has listened to us, and the pointedness with which he has answered all questions asked him by members of the committee.

Senator Woodward: I move that we recess until tomorrow morning at ten o'clock.

The Chairman: Gentlemen, we will recess until tomorrow morning at ten o'clock, at which time we will take up some new witnesses.

(Thereupon at 6:30 o'clock p. m., Friday, July 24, 1931, the committee recessed until 10:00 o'clock a. m., Saturday, July 25, 1931.)

## EIGHTH DAY.

(Continued.)

Senate Chamber,  
Austin, Texas,  
July 25, 1931.

The Senate met at 9:30 a. m., pursuant to recess and was called to order by Lieutenant Governor Edgar E. Witt.

### H. C. R. No. 4.

The Chair laid before the Senate: H. C. R. No. 4, Relating to a meeting of certain officials in regard to the cotton situation.

Read and adopted.

### H. C. R. No. 5.

The Chair laid before the Senate: H. C. R. No. 5, Relating to freight rates on farm and ranch products.

Read and adopted.

### At Ease.

Senator Woodward received unanimous consent, at 9:40 o'clock a. m., for the Senate to stand at ease subject to the call of the Chair.

### Adjournment.

The Senate was called to order at 1:50 o'clock p. m. by Lieutenant Governor Edgar E. Witt.

On motion of Senator Woodward, the Senate, at 1:51 o'clock p. m., adjourned until 9 o'clock Monday morning.

## TRANSCRIPT OF TESTIMONY

Saturday, July 25, 1931.

Morning Session—9:45 o'clock.

Judge R. L. Batts was sworn by the Chairman.

The Chairman: Judge, I believe the committee would like to have a statement from you, and then they may ask questions.

Judge Batts: Gentlemen, I am a member of the Board of Regents of the University, and, while I am interested otherwise in your proceedings here, it is in that capacity that I speak to you, at the suggestion of my fellow members. We want you to have before you the facts with reference to the Reagan County field belonging to the University.

About two and a half years ago one of the operators in that field,

there being only two—(answer interrupted)

Senator Woodward: Judge Batts, pardon me. The Reagan County field might be better known by the name of the Big Lake.

Judge Batts: The one I have reference to is on University land in Reagan County and at Big Lake and is operated by the Big Lake Oil Company and by the Continental Oil Company, now in control of Group No. 1, primarily a subsidiary of the Texon Oil Company. About two and a half years ago these companies undertook to secure deep oil, and drilled a well to the depth of 8525 feet. As the result of that well, oil came in primarily at the rate of about seventy-five barrels a day, which increased to approximately three thousand barrels. The oil was brought up in the form of gas and was converted at the head of the well. Subsequently eight additional wells were drilled by the Texon and by the Big Lake people. Some months ago the wells began to—As the result of this drilling the total of gas which came from the wells was approximately 400 million cubic feet a day. As the result of the activities of the Railroad Commission and of the Attorney General and of the Regents of the University, of course supplemented by the activities of the companies, two of the wells were discontinued, and subsequently one or two more, and the present output of gas is 110 million, or approximately 110 million cubic feet of gas a day. The actual condition at the present moment is represented by a statement for one day which I have before me. This is for that particular day only, there being from day to day a slight variation in the amount of oil and gas that is produced. At the present time—this is of July 22nd—the production and the gas use was as follows: One-C, which is the deepest well and which offsets the well which is the shallowest—if you can speak of 8500 feet as being shallow—produced six thousand barrels—produced on July 22nd six thousand barrels of oil; it produced a gas volume of 14,100,000 cubic feet. The ratio of gas and oil was one to 2375; that is to say, it took 2375 cubic feet of gas to produce a barrel of oil. That was well known as One-C, belonging to the Big Lake Oil Company.

Two-C is shut in. Three-C is shut in. Four-C at 8797 feet produced 2203 barrels of oil and 8,742,000 cubic feet of gas, with a ratio of one to 3920; that is to say, 3920 cubic feet was used to raise a barrel of oil. Number Five-C, also belonging to the Big Lake, produced 4016 barrels and produced a gas volume of 18,676,000 cubic feet and with a ratio of one to 4650; that is to say, 4650 feet of—cubic feet—of gas was used to raise one barrel of oil. That constitutes the production of the Big Lake Oil Company. The total production of high gravity oil was 12,219,000 barrels, and with a ratio of oil and gas covering the whole—all of the wells of one to about thirty-two or thirty-three hundred. The balance of the field is operated by the Continental, the owner—the wells being in the name of Group No. 1 Oil Corporation. On this day Number One-B, which was the first well brought in, produced 2222 barrels; the gas volume was 17,642,000; the gas and oil ratio was one to 7940 cubic feet; that is to say, it took 7940 cubic feet to raise a barrel of oil in this well. Number Two-B and Number Three-B are shut in. Number Four-B produced 8431 barrels, with a gas volume of 58,651,000 cubic feet, or a ratio of one to 6950; that is, to raise a barrel of oil in this well required 6950 cubic feet. During the hearings which have been held before the Railroad Commission the facts concerning these wells were developed, and the Railroad Commission passed an order with reference to the tubing, and also, I believe, undertaking to reduce the total output of gas in the field. As I have heretofore stated, as the result of these hearings and other factors, including, I may suggest, apparently an earnest desire on the part of these oil companies to get the best results that they could get under the circumstances, and a handicap by the fact that the engineering problems were entirely new, that there were no producing wells at depths anything like approximating these, the nearest production being at Kettleman Hill in California, they were necessarily careful in their activities, not knowing what would be the result of either tubing or closing in the wells or undertaking to further deepen these wells. I assume that from that time up to the present time

an effort has been made to regulate these ratios, and as the result there has been a reduction of gas from a ratio of about 11,000 cubic feet to a ratio for the whole field of about 5,000 cubic feet. The results obtained up to the present time fairly well indicate to the minds of those persons who are familiar with the matter and who are undertaking to represent the University that the oil and gas ratio can as a general rule be reduced as these wells are deepened. I call your attention again to the fact that One-C at 8908 feet, offsetting Wells Two, One-B, 8525 feet, a difference of about 400 feet in depth, the wells being, as I recall, about 6,000 feet apart—that One-C, the deeper well, produced at a ratio of one to 2375, while Group No. One Oil Corporation One-B produced only at 7940.

The Board of Regents desires to pass up to you—we are not trying to pass the buck, I may say, but we realize the fact that you have power far beyond any that we can exercise. Looking at the law as it stands at the present time, we are not at all assured that we can do anything. We are assured that, while these conditions have been greatly improved, they ought to be further improved. We would like for you to put us in a position, if you can do that, by which we are not to have this policy determined by the oil companies but by an independent body that can take into consideration the rights of both the State and of the oil companies. What has been done up to the present time indicates that at least most of those wells can be produced upon a very much smaller ratio than they are being produced at the present time. As shown here, one of those wells is wasting or using less than one-third of what the nearest well is using. The facts seem to indicate that as you continue to go down—and we are advised that this can be safely done now in each of the wells—the oil will be found heavier and that the gas ratio can be improved and that with a proper handling of this field substantially all of the oil that may be in that reservoir may be produced if it is produced in a sane manner and not too rapidly; in other words, that the reservoir pressure or the water will take the place of the gas, and if properly handled that all of the oil can be

taken from this pool. Now, we want all of the oil taken from this pool, but we don't want this tremendous asset of the University and the State of Texas in the way of gas to be unnecessarily used or wasted. I call your attention to the conditions at the present time. I don't know what the oil is worth today, but two or three days ago we were put upon a basis of 20 cents for this oil. The price received is hard to determine, because it is to be determined by an average of the wells. I say two or three days ago the basis was apparently about twenty cents a barrel, and we have had this anomalous condition; that we receive two and a half cents for a barrel of oil and five thousand cubic feet of gas. Now, it is a little difficult to determine what that gas is worth, but if it is worth one-tenth of what I am paying as a citizen of Austin for gas, than it was worth at least six cents a thousand cubic feet. We are paying therefore, thirty cents' worth of gas in order to raise twenty cents' worth of oil. Now, whatever may be said about economic or physical waste, there would from my standpoint be no question but that it is both economic waste and physical waste. Now I believe that you have complete control of the matter of physical waste. At least we don't believe that there could be any justification for the use of 110,000,000 cubic feet of gas—the turning loose of that much gas into the air. I want to suggest, in order to try to be entirely fair about this matter that I understand that that gas is being run through a compression plant, and that that part which is wasted or not used comes from the residue gas after the gasoline shall have been extracted. But even under such conditions I feel there can be no justification for the use of this amount of gas to produce this amount of oil.

Now, what is a proper ratio, it looks like to us might be determined by some agency you may establish, or by the use of the agencies already established. It is a question not to be determined except upon investigation and upon a thorough knowledge of all the facts. It would seem to be perfectly safe to state that if 2273 is the amount of gas used at one point, that 7900 is not a proper ratio to be used at a well 600 feet from it.

The Chairman: Gentlemen, we will stand at ease for a few minutes for the flag presentation ceremony at the front steps of the building.

The Chairman: All right, gentlemen, be seated.

Judge Batts: Continuing, gentlemen, with my statement, I want to suggest that the Board of Regents are not undertaking to tell you what you should do about this matter, and especially what you should do about the matter of gas conservation generally; what we are undertaking to do is to pass up the facts for your consideration and determination. We think it not at all impossible that there may be a differentiation between the waste of gas on properties belonging to the State, as the University and public school land, and on land privately owned. Individually, in my judgment, you have complete authority in regard to both, and therefore any laws upon this subject would be general in their character. As I have said before, the Board of Regents feels that they are charged publicly with the property belonging to the University. It is a fact, I think, that in the University Field, a greater amount of gas is being turned loose into the air, or burned, than anywhere else. Also, it looks like to me it would be the place where it would be easiest to handle the situation. The number of wells is limited, and the result of the flow of each of these wells is very definite, all those facts can be definitely ascertained with reference to it, and this, it seems to me, would be a proper way to handle this situation. Following statutes which have been passed in the State of California, and which have been sustained so far as the State courts are concerned, it would be within your power to pass a law that would declare that any turning loose of gas into the air or burning the gas was prima facie waste. It ought to be fixed as constituting prima facie waste, used as an element of evidence, rather than as a definite statement of what is waste, because it may be that under certain conditions it is essential that the gas be used to secure the oil; there might be no other way to secure it, and it may be also that no use could be made of the gas after having performed this function. To specifically apply the facts as they have de-

veloped up to the present time, the one—three Big Lake wells, using 2375 feet of gas to raise a barrel of oil, is so situated that it may be impossible for this gas to be sold. Of course, that would raise a question in your mind, as it does in ours, as to whether, when nothing can be secured for the oil, or a lesser amount secured for the oil than the cost of production, whether or not these wells should not be shut down entirely. But that is a matter that ought to be passed upon by somebody qualified to consider all of those elements and determine whether such a proportion of gas should be used in order to bring up the oil. We are informed, for instance, that there is no way of securing oil in this field except by the use of gas, that at such a depth, and at a depth which will be in the future more lower than this, it is impossible to produce oil except with gas. Now it seems to us that if you should pass a law making it prima facie waste to burn the gas, and authorize whoever may constitute your conservation committee, to indicate the exceptions to that, to indicate with regard to fields, or particular wells, and allow the use of gas that can not be utilized after it is brought up, or after it has brought up the oil, and to indicate what deviations shall be made from the general rule with reference to burning or turning into the air, that the gas—that this exercised as I would assume, properly and after proper advice, and after ascertaining all the facts, would get for us the best results. Of course, as I have heretofore suggested, I can not think of any ratio for the use of gas where the production of oil that could exist which would work more than the oil produced, but I assume this is only a temporary condition, and I should imagine somebody to have the discretion to determine what this permissible ratio should be. I made the suggestion that possibly the State owned land could be differentiated from the other. I do not know whether this would be proper classification or not. We are running up against constitutional questions constantly in the matter of these laws on conservation, and it may be that there is no such proper classification as between State owned land and other land. It seems to me that under the old decisions in

the case of Ohio Corporation against the State of Indiana, argued out by Chief Justice Wright many years ago, that it is quite permissible for the State of Texas to pass a law which regulates the bringing out of gas—the use of gas as a hoisting agent for oil, with reference, not alone to State land, but also all other land.

We had this condition in Texas as I understand it, that the rule of property right, that every owner of land in the pool is authorized to get as much oil and gas out of that pool as he can. This right is limited by the right of everybody else to do exactly the same thing. Therefore it would mean to me to be one of those matters that are within the control of the Legislature to protect the conflicts that may arise between these different owners and bring about an equitable distribution of the property that is under their land in this pool. I see no reason then why it would be necessary to raise this question as to whether a classification could be made between the State owned lands and the lands of private individuals. It does seem to me that inasmuch as this gas can never be recovered, inasmuch as it is a complete loss when it is either burned or turned loose in the air, inasmuch as it is taken away from the possibility of taxation of the State that it is one of those things which can be and ought to be regulated for the benefit of the present and all future generations. At all events I cannot see any excuse, if it can avoided in any sort of way for a hundred and ten million cubic feet of gas to be turned loose into the air every day. You could see what it would mean if you multiply that by three hundred and sixty-five to indicate the loss for a year, it is entirely beyond the comprehension of the human mind, it is as I have suggested, a permanent loss. It is under these conditions that we, the Regents of the University, come to you for help, asking not that we be given authority to do anything but that other agencies of the State who would be expected to be impartial, to pass upon this matter of what amount of gas might be used there for the purpose of raising a barrel of oil.

Senator Woodward: Mr. Chair-

man, I would like to interrogate Judge Batts just a little bit.

The Chairman: You may proceed.

#### Questions by Senator Woodward

Q. Summing up your statement I gather that it is your opinion that the excessive use of gas as a lifting agency to produce oil is regarded by you as a physical waste?

A. I don't see how there could be any question about it.

Q. And that necessarily does result in a financial loss?

A. From my standpoint it is not possible to always differentiate between economical and physical waste; certainly in this case it is both.

In other words, if there is a physical waste then necessarily there is at least a financial loss if it is not regarded as an economical waste?

A. If the thing turned loose has no value of course it is neither financial nor economic waste, if it has a value it is both. The conditions that have arisen in regard to the University land results in this circumstance, that we are getting less today than has been secured in the past for practically the same amount of oil.

Q. It is your idea, and I concur with you, that there ought to be some laws by which some agency of the State would have the power to prevent the operators from wasting a natural resource, such as gas to produce oil?

A. That is my idea about the matter.

Q. Now, that being true, I will ask you to state if this definition of waste would—in your opinion—would be sufficient to enable a commission or any agency to handle that situation, to-wit: "Waste is incident to or results from the unnecessary inefficient, excessive or improper use of the gas, gas energy or water dried in any well, pool or area."

A. Senator, the only criticism I have of that is it assumes it to be a waste to start with. I would say that any use of gas, which—an amount which is unnecessarily used in the production of a barrel of oil, the gas over that would constitute definite waste. My criticism is verbal.

Q. So if you have a statute then that permitted a committee or any agency to regulate that matter, if resulting from unnecessary inefficient or improper use of the gas would cover the situation?

A. That would cover the situation, except I believe it can be approached from a different angle more efficiently. That is to say placing upon the persons who use the gas the obligation to show that it is now wasted if it is turned loose in the air prima facie evidence ought to be regarded as waste.

Q. Now, if we have such a statute, and I concur with you that it is doubtful if we have, then such a statute would make prima facie valid any rule of the commission dealing with the subject, it would then meet that situation?

A. Yes, sir. The only point I have in mind for consideration of the committee would be this, that it looks to me like that anything that can be legislated upon by the Legislature would have to be more efficiently handled than if passed up to the commission. There are certain things which would necessarily be passed to the commission, but the Legislature can state firmly that if anybody turns gas loose into the air or burns it that that is waste unless the contrary can be shown.

Q. That is without beneficial use?

A. Yes, sir, without beneficial use.

Q. Now, Judge Batts, I have figures here which have been handed to me by Senator Beck. I am assuming these figures are correct, as to the amount of royalties received by the University from its holdings. I will ask you to state when I present these if it is your understanding they are substantially correct. For instance, beginning with the fiscal year 1928, beginning September the 1st, and ending August the 1st, 1929. This record shows that in September, using round figures, the royalties amounted to a hundred and forty-five thousand dollars in October, one hundred and thirty-six thousand dollars in November; one hundred and thirty-seven thousand dollars and one hundred thirty-eight thousand dollars in December. Then coming in January, 1929, one hundred and forty thousand dollars; Febru-

ary, one hundred and thirty-five thousand dollars, and on down until August it was one hundred and fifty-seven thousand. Then beginning with the fiscal year, September 1st, 1929, and ending August 31st, 1930, September shows one hundred and seventy-five thousand dollars, October, one hundred and sixty-four thousand dollars, and on down to August, 1931, one hundred and eighty-seven thousand dollars. Then with the fiscal year beginning September the 1st, 1930, and up to and including June of 1931, it shows that in September, 1930, the royalties amounted to one hundred and eighty-one thousand dollars and then a gradual decrease until in June the amount of forty-four thousand dollars.

A. I am sure that is approximately correct. I tried to keep up with those figures.

Q. Now, regardless of what is the cause that is in decline; it is a fact that because of the present price of oil the royalties paid and heretofore paid to the University is declining daily almost until in June it had dropped to forty-four thousand dollars as compared to some months in 1928 of about a hundred and forty-eight thousand dollars and in some months in 1930 to two hundred and six thousand dollars, I believe that is the highest figure?

A. I am sure that these figures are approximately correct and the difference would be emphasized in the next report where the prices are lower than they have been at any time. Practically it has resulted from the decline in the price because there has not been any substantial difference in the amount of production. Those are matters that we don't know to what extent we ought to try to deal with them, but we do know there is being a great deal of gas used out there and we believe that is one of the things you can control. If we had our own way about the matter we would ask that production be discontinued at the present time, in being we have so indicated to the parties at interest, but manifestly it is not one of those things we can control by ourselves, because it is in the nature of a contract between the State and these oil producers.

Q. Judge Batts, you being a regent of the University of Texas and living in Austin you keep fairly well

posted as to the State's financial condition, do you not?

A. Somewhat, yes.

Q. I will ask you if it is not a fact that the State's finances as a result of the present price of oil, regardless of what causes it, has suffered in proportion as the State of Texas?

A. It is a little bit more, because we haven't quite had all of the effect that can come from the East Texas situation. In other words, we are getting more for the oil than might be justifiable, if there is any way of justifying this price.

Senator Woodward: Mr. Chairman, I want to offer in connection with Judge Batts' testimony as an exhibit, the data which I have stated was handed me by Doctor Beck, who is Chairman of the Senate Finance Committee.

The Chair: If there is no objection, it will be entered in the record.

Senator Purl: Who made the record?

Senator Woodward: I think the auditor of the University, that is my understanding. I will ask the reporter to identify this as an exhibit.

The exhibit above referred to is as follows:

#### WEST TEXAS OIL FIELDS.

##### Royalties.

##### Fiscal Year 1928-1929.

1928	
September \$	145,961.99
October	136,544.90
November	137,895.85
December	138,070.49

1929	
January	140,156.88
February	135,946.01
March	137,887.32
April	130,639.33
May	141,121.39
June	180,954.02
July	171,401.47
August	157,639.94

**\$1,754,229.59**

##### Fiscal Year 1929-1930.

September \$	175,493.44
October	164,791.48
November	154,540.89
December	182,091.66
January	178,212.23
February	142,142.28
March	161,653.47
April	166,753.57

May	181,581.67
June	206,085.89
July	221,458.37
August	187,126.60

**\$2,121,931.55**

1930	
September \$	181,341.12
October	183,125.23
November	120,525.32
December	140,932.86

1931	
January	138,983.80
February	117,966.01
March	90,611.31
April	71,185.13
May	53,550.16
June	44,974.20

**\$1,143,195.14**

##### Summary.

1928-1929	\$1,754,229.59
1929-1930	2,121,931.55
1930-1931	1,143,195.13

**5,019,356.28**

##### Reagan County average price

1928-29.....95 to \$1.28

##### Reagan County average price

1929-30.....1.00 to 1.40

##### Reagan County average price

1930-31.....1.23 to .32 Present price.

##### Pecos, Crane, Upton Counties

1929-31 about 65 to 98

##### Pecos, Crane, Upton Counties

1931 to date 62 to 25c present price.

Senator DeBerry: I would like to ask Judge Batts a few questions.

The Chair: Proceed.

##### Questions by Senator Deberry

Q. I understand from your line of testimony one of the main items of waste out in this section is the matter of waste by gas, is it not?

A. Yes, sir.

Q. Do I understand you to say that gas is wasted when it has not served a beneficial purpose, that is the use of it?

It is not a waste so long as the use of it brings in a fair return.

A. I think that is the case, Senator.

Q. In other words, if gas were allowed to escape in the air after it had brought to the surface oil that would sell at a price, at a fair price, then it would not be a waste if it could not be still used, if it went into the air?

A. I don't want to go quite as far as that because I think that gas has a value and use after it has brought the oil to the surface, and ordinarily it is practicable to use it after that, but I think there ought to be an obligation on every person who turns it into the air to show there is no way to handle it even if the amount is reduced as to the ratio per barrel. Moreover it seems to me that this situation arises in regard to the gas turned loose in the air; it is used for the benefit of the lessee, and it is furnished by the lessor. The ordinary rule with reference to the production of oil is for the expense of production to be borne by the lessees.

Q. In other words, you construe that a company after having used gas for pressure lifting power, that if it burns that for its own production usage, that they are not treating the lessee fair?

A. It is putting upon him a part of the burden that ought to be borne by the other, and moreover it has got a value and the lessee ought to be under obligation to show that nothing further could be secured from it.

Q. When you say nothing further, do you mean nothing further in economic value, taking into consideration its processing and whatever usage it might have?

A. Take the specific case here, the Big Lake Oil Company is given the use of this gas after it gets to the top, that is to say, it processes it. After that it is still using a portion of it. A little part of it is sold for domestic uses and a part is used for the operations in the field. Now, I want them to be under obligation to show that all of it is being so used, or show why they can't so use it.

Q. You would not advocate that after gas has been used for lifting power, that the company be forced to process it at an economic loss?

A. No, sir, I am not asking for any economic loss at all. I am asking that they be under obligations to show there is no economic loss.

Q. In other words, to show they could not process it without suffering an economic loss?

A. Yes, sir.

Q. You do not subscribe then, to the doctrine that so long as gas in its lifting power brings out oil that

sells at a profit that they have got a right to use it for that and then release it, if that released gas could be economically processed?

A. That is my proposition.

Q. That is as far as you care to go?

A. That is as far as I ought to go in stating a general principle, but I do think much consideration ought to be given to the circumstance that a time must promptly come when the gas is going to have a value comparable to the oil.

Q. So much for that. I am glad you answered the question because if I understand some of the testimony here is that so long as gas will bring oil out that will sell at a value? — — —

A. (Interrupting) Senator, the situation as disclosed here may be that that gas is worth more than the oil that is produced. It is hard to tell what that may be, because I don't know what the gas is worth.

Q. The reason I am asking these questions is this: I want to know how much the price of that crude oil is going to have to do with this Commission's discretion with respect to forcing them to utilize it. At the present price gas would have to bring a very big return.

A. What they are selling out there I understand is being sold at three cents a thousand cubic feet.

Q. You didn't quite understand me. At present gas would not have to furnish very much lifting power value—I mean wouldn't have to furnish very much value to show that it was being used economically in producing oil at so cheap a price. Now, what I am trying to get at is in the using of this how much does the price of crude have to do with your recommendations?

A. As I suggested, one of the things that a Railroad Commission or Conservation Commission would determine is the proper ratio between the gas and the oil. Now, I would say that if the gas is worth more than the oil it produces, there could not be any proper ratio. I would say there would necessarily be a loss by the production of the oil.

Q. In trying to save the gas that you think is being wasted out there, would the Commission, in trying to do that, have to do something with respect to restriction of the flow of



oil, proration, or something of that kind, have to try to inflate the value of crude petroleum to reach the end that you desire with respect to conservation of gas?

A. You don't have to go that far. You can take this specific case we have before us and it is demonstrated that oil at one place is being produced by 2,537 cubic feet of gas per barrel and 600 feet away from it it is being produced at the rate of 7,940 cubic feet of gas per barrel. Therefore, the Railroad Commission can say to the second well that you can either produce your oil with 2,537 cubic feet of gas per barrel, or you can stop.

Q. Now, I want to ask you one more question on an entirely different line, as to my obligation in particular, and it applies to every other Senator here just in proportion as to how they see their responsibility, not in proportion to my purity of purpose, or theirs. That has nothing to do with it. Now, the question that Senator Woodward asked you with respect to using this artificial method which you claim this whole structure is, and it is generally admitted—now, how much more am I obligated to my people with respect to trying to restore values than I am to the State in trying to save the State an income on taxes? In other words, if it is shown 13 per cent of the farms in my county went to outside land holders, last year, insurance companies, joint stock land banks, and so forth, how much am I under obligations to try to protect the State, how much more than I am under obligation to my people with respect to their ability to pay taxes?

A. I don't think there is any difference at all. I think you are under obligations to do what you can for both. I realize the facts which you are setting forth and so far as I am individually concerned, I have no views beyond the circumstances that I believe the Legislature of Texas can prevent that which belongs to the State and ought to be utilized by the State from being burned up or thrown away.

Senator DeBerry: All right, that is all.

Questions by Senator Purl.

Q. Have you any definite ideas that would help the Committee con-

cerning the use of gas in industrial plants, as against its use by little individual consumers—the regulation of that?

A. Senator, in the handling of this problem, you, of course, have got to distinguish between those industries that are affected by the public interest and which are absolutely under your control, and those which are not affected by the public interest and where your control is limited. I would say as far as the matter of furnishing power and lights and things of that kind are concerned you can either regulate it yourself or pass it up to somebody else to regulate it.

Q. Now, then, if a concern taking natural resources from the State is using another natural resource to get that natural resource from the ground that means two natural resources are gone forever, doesn't it? Take sulphur, for example?

A. I don't know. Take the gas you use, you burn it, or turn it loose in the air and of course nobody gets any further return from it. If you produce oil and sell it at a proper price and use the proceeds for something else that is different proposition.

Q. What would be your idea as to the State Conservation Commission regulating the use of gas in bringing sulphur to the ground? Do you think it would be public policy for the State to authorize the Commission to prohibit the sulphur interest from using natural gas for bringing sulphur to the ground?

A. I don't know. You are encroaching upon a debatable proposition with reference to your constitutional powers, as to what uses should be made of these things if they are within the ordinary course of business. I can't draw those lines. I can draw a line definitely and state you can prevent gas from being turned loose into the air or burned up.

Q. The same thing would obtain in the use of gas in manufacturing cement?

A. The same rules would apply, whatever they are.

Q. Would you advise that we write into the law that waste would be—that the Commission could construe waste as using any exorbitant amount of gas for industrial purposes?

A. If you would say an exorbitant

amount, yes, sir, I would say so. If you say it could not be used at all I would say you would have a constitutional question that I do not undertake to pass on.

Q. In certain large buildings in the cities, I am interested in the question from the standpoint of gas, not gasoline. In certain of our large cities in Texas they have a way whereby they can use oil, if it is cheaper, and use gas, if it is cheaper.

A. That would seem to be a pretty good plan.

Q. Now then, if they use natural gas in large industrial plants, is there a likelihood of a shortage—

A. (Interrupting) Senator, you are trying to get me into a territory where I can not speak with authority. All I can say about this whole situation is that some things appear to me to be definitely physical waste. Also, I can tell you what the courts have said about those situations. Now, I can not tell you what they are going to say at some time in the future.

Q. Considering the health and happiness and comfort of the people, gas burned in stoves in our cities is more essential than the gasoline, is it not?

A. What?

Q. It is more essential, for the good of the greater number?

A. I think so, yes, sir.

Q. If we had to stop them using gasoline or using natural gas for the benefit of the people as I have just outlined, gas is the more important subject to consider?

A. I think you have a very important subject to consider when you reach it of regulating the expense to which the citizens of the State of Texas, especially in the cities, shall pay for natural gas in view of the fact that natural gas distributing companies are paying about three cents a cubic foot for it and charging all the way up to seventy-five cents a cubic foot for it.

Q. Based upon your knowledge of the different oil fields in Texas regardless of whether or not you consider gas is being used in bringing oil to the surface, a useful expenditure of it, but based purely upon the amount of gas taken from the ground, which would you say is the more flagrant violator of this law, East Texas, or West Texas? Is there more gas going to waste

in West Texas than there is East Texas?

A. I can't tell you. You have enough in this one field though. Of course I have that general information with reference to the use of gas in the State and had been inclined to believe, until I got more light upon the subject, that the use of, the turning of gas into the air or burning it up ought to be prohibited entirely, but I am rather inclined to think, after further study of the matter, that would be unwise. I do think it is a fact that in most of the oil fields in Texas there is no occasion to waste any gas whatever.

Q. The United States Government has adopted the policy of taking off of the market, that is, leasing of the lands of the public domain, all oil land with the exception of some that is now out on contract? Is that not true?

A. I think so.

Q. What is the policy of the University Regents regarding that?

A. The University Regents have no control of the matter. The members of the University Land Leasing Board, backed up by the University Regents, do not desire under present conditions to lease at all.

Q. Senator Woodward read you a few minutes ago a part of a definition of the Woodward Bill and asked you certain questions concerning it. Are you familiar with this bill?

A. I am, in a way.

Q. You have read the bill?

A. Yes, sir. Of course, I haven't studied it as a lawyer would have to if he wanted to attack it, or to amend it.

\*Q. Could you tell the committee whether or not in your opinion Section 9, the last sentence which reads as follows,—Have you that before you?

A. No, sir.

Senator Woodward: I will give him a copy of it.

Q. Now, the last part of Section 9, about the last sentence.

A. All right, I have that.

Q. "In all suits or other legal proceedings under this act in which the validity of any rule, regulation or order of the Commission may be brought in question, the said rule, regulation or order of the Commission shall prima facie, be deemed valid until shown to be invalid, and

must be obeyed." Would you mind giving us the benefit of your ideas as to whether or not that sentence would authorize the Railroad Commission, if they did take into consideration market demand or economic waste, wouldn't it have to be enforced until it is proven otherwise?

A. Senator, that is what it says. However, of course, any legislation you may have here will have to be considered in connection with the ruling made by the Supreme Court of the United States to the effect that where a law has been passed and its application must be the result of the filing of suits, that the validity of that law is not to be passed upon purely by looking at its terms, but must also consider whether or not that which has been passed under it constitutes a confiscation of property under the Fourteen Amendment to the Constitution of the United States.

Q. I want to ask you one more question, and you might not be prepared to give an answer, and I do not want to urge you to unless you are. Are you prepared to say from hearing read the bill at this time whether or not the passage of this bill would authorize the Railroad Commission, in its present verbiage, to take into consideration market demands or economic waste?

A. I can't answer your question.

Q. You don't know whether it would or not?

A. No, sir. I want to say this: that in the present bill under which they are now acting there is an express exception of the economic results that might result from the order; in other words, it is confined by its terms to physical waste and certainly under the present law any order based upon economic waste as distinguished from physical waste would be beyond the terms of the law.

Q. And if this law does not include it, then we have not solved that problem, have we?

A. I don't see how you can pass a law here that will define physical waste that will make it impossible for the Commission to consider all the consequences of that which they do; in other words, it does not seem to me that whatever your language here you are going to deprive them of the power of thinking.

Q. If you have answered this question, you need not answer it—I did not hear it. Do you advocate the passing of a bill that would authorize the Commission to take into consideration market demand and economic waste?

A. Senator, what we really need in an act which will conserve the resources of the State, and I am in favor of a law which would not involve any question of whether we have gone beyond the limit of our power or not. I want a law which will now and without delay or any question save the natural resources of the State.

Q. Judge, you have served in many public capacities, have you not?

A. I have done the best I could.

Q. I respect your opinion—that is the reason I am asking you these questions. It is not a question of trying (question interrupted).

A. I understand, Mr. Purl. If I am a little vehement in my language you will excuse it as it is because I think strongly.

Q. I am asking questions to get the benefit of your own experience. I am asking as a matter of public policy would you advocate the passing of a law placing in the hands of any Commission the right to take into consideration concerning the oil and gas situation, market demand and economic waste?

A. Senator, I will have you understand, if I can make it clear, that I think every business is better conducted by individuals than by the government.

Q. Yes, sir.

A. I don't want any more interference than we have to have.

Q. Yes, sir.

A. I do think, however, that we are entitled to protect ourselves against the waste of natural resources. Now, what must be done to that end, I do not know, but I suggest if you will protect your natural resources the matter will adjust itself. If we quit wasting things, I think we are going to have a situation here where a proper price will be secured for oil and a return to normal conditions where the State got a proper revenue from production and where different industries and different individuals will then enter a much more prosperous condition.

Q. Now, if I can repeat the question Senator Hopkins asked Governor Sterling, I want to ask you the same question: Do you not think that if we pass a bill giving this authority to the Commission concerning the oil situation and the gas situation, are we not laying a predicate and a dangerous precedent of placing agriculture and other forms of activities under government control?

A. Very naturally anybody who has studied the history of this country and the litigation of this country and the legislation of this country must be apprehensive with reference to the result of any encroachment upon the ordinary rights of a private individual. With the apprehension that must exist that the matter will some time go too far and with a natural inclination upon the part of the courts to progress or at least to advance along with the legislation, so far as I am concerned, I would be very content, indeed, if we will protect our natural resources and not try to regulate any other business. Applying your question to the other matters involved here, I feel like it is a part of the business of the State to protect not only the natural resources but the soil and the forests in the State if we can find some way of doing it.

Q. Now, then, are you aware of the fact that Texas produces—it has been stated—about ninety per cent or more of the sulphur of the world?

A. Well, I am quite sure it is the case. I don't recall where I got the information.

Q. You do agree that sulphur is a natural resource?

A. Yes, sir.

Q. Would you advocate under this bill or passing a similar one that would allow the Commission to say how much sulphur they could take from the ground down in those counties where sulphur is abundant?

A. I have never given that matter consideration. It does not seem to me that there has been any improper or wasteful production of sulphur, so far as I know. Of course, you can take it all, as has been done in those sulphur fields in Louisiana, but so far as I know it has been put to a proper and profitable use and so long as that condition exists in Texas it does not seem to me neces-

sary for the Legislature to do anything.

Q. You don't know the process of taking sulphur from the ground?

A. Yes, I know something about the process.

Q. There are two different processes.

A. You can dig down and get it or get it out in a sensible way, as they do.

Q. You don't know whether the process of getting it out of the ground is the cheapest way or not?

A. Well, if you are going to produce sulphur, it ought to be done that way.

Q. Will you say we ought not to pass any law about it.

A. I don't think you ought to pass any law until necessary. If it is wasteful, why cut it out. There are plenty of things to legislate upon without going into doubtful fields.

Q. Well, suppose in another oil field it is impracticable to get that gas to the consumer.

A. Senator, I don't think that any such condition can arise.

Q. You think in every gas field in the State the gas will be used?

A. It will be used if you wait long enough. There is no necessity to throw our resources away because we can not at this moment utilize them. It has a value for the future.

Senator Purl: That is all.

Senator Hopkins: Mr. Chairman.

The Chairman: Senator Hopkins.

Questions by Senator Hopkins.

Q. Judge Batts, I was unfortunate enough not to hear the first part of your testimony this morning and don't like to have you repeat it, but I would like to ask a question which has been in my mind with each of the witnesses before us, and that is this: It has been advocated by men who have given this subject much thought that the creation of a new commission should include combining with it present existing agencies, such as the Board of Water Engineers, the Reclamation Department, and perhaps others. I would like to ask you, as a citizen of Texas, whether or not you believe the administration and control of oil and gas should have combined with it in the same agency the administration and control of our natural water power resources?

A. Senator, I would answer the

question this way: I would say if the present Railroad Commission is to be used, these other departments ought not to be placed there, because it seems to me they are already burdened probably with more than they can attend to. If a new commission is to be created, it might be well to have all conservation in one body.

Q. Do you believe it would be dangerous from the standpoint of public policy to combine the handling of water power resources, which leads you into the control of utilities, with the control of natural resources, such as oil and gas.

A. My general thought upon the subject is that we have other important resources besides oil and gas, and possibly if we had a commission whose duties were confined to it it might get better results than seem to be done by some of our present bodies. So far as the Railroad Commission is concerned, they have a great deal of work to do and it would be quite impossible for them to discharge their present duties, only that they can give out a large part of that work to an individual who can handle it. For instance, Mr. Parker, I assume, does most of the work, outside of the matter of hearings, for the Railroad Commission applicable to oil and gas.

Q. Judge Batts, we are confronted here with the proposition of deciding, as I see it, between two schools of thought: First, the creation of a new commission to handle the natural resources, and the other retaining the control of it in the present agencies. Now, this thought troubles me, why isn't it possible under an agency like the Railroad Commission to achieve the same result if the authority is placed in the hands of the Railroad Commission with the power to enforce its orders? Would you agree to express an opinion as to which would be most beneficial to the interests involved—that of a new commission to handle it or handling it by existing agencies?

A. Senator, as I have stated, it looks to me like if we are going to regulate the development of the oil fields in Texas it is going to take a great deal of time if I am going to answer the question and discuss the situation as it is.

Q. I would like for you to do so.

A. The Railroad Commission is

undertaking to handle the situation in Texas. In East Texas. It had primarily a hearing that went over something like ten days, as I recall, and it had a subsequent hearing of two or three days. Now, as a result of all that hearing, it seems to me that they did not develop those facts that were essential to the passage of an effective order. It looks like to me that if you are going to pass orders that are effective you must take into consideration the differences in the different fields, and take into consideration the differences in the different wells. Those things have to be done in order to make them valid, and they have to be done in a legal way, and a record made of them, and in view of the fact that all of that would come up before the Railroad Commission, together with the hearings that now take up so much of their time on the matter of rates, and so forth, I would be apprehensive that the Railroad Commission would not have time to properly attend to it.

Q. It has been stated by some that the Railroad Commission could have been successful in its administration of its proration order had it been cloaked with sufficient authority to enforce it. I would like to ask if this Legislature should, by strengthening the common purchaser pipeline bill providing for ratable taking, and provide reasonable appropriation for increasing the staff of the Railroad Commission, in your opinion, could the present Railroad Commission satisfactorily handle the subject?

A. From my standpoint there have been two reasons why the work has not been satisfactory up to the present time. In the first place, it is perfectly clear that the Railroad Commission has not been given the authority which they have undertaken to exercise. Manifestly, any authority they do exercise must be upon unequivocal statement from the Legislature, about which there could be no question. In the second place, nothing can be done effectively by the Railroad Commission without a thorough ascertainment of the facts, which takes a great deal of time. Another reason is because the Common Purchaser Act and the orders of the Railroad Commission have been in conflict.

Q. Judge Batts, just one other

question. Mr. Holmes, on yesterday, in response to a question by me, stated that it was his impression that the Gulf Oil Company was more or less antagonistic to the general proration scheme. Now, I asked him that question in order that I might have some questions to ask you along the same line. If that be true, I am sure it is predicated upon good reasoning, and I would like to ask you, Judge Batts, why the Gulf Company reached that conclusion?

A. I think the statement is an incorrect statement of the attitude of the Gulf Company to start with.

Senator DeBerry: Excuse me, in the question that Senator Hopkins propounded to judge Batts, if he will allow me, I think he intentionally misstated it to this extent.—If I am wrong, I want Senator Hopkins to correct me. I think Mr. Holme's statement was that the Gulf Company had favored proration, but that they had been averse to legislative enactment to secure proration.

Senator Hopkins: That is probably more correctly stating Mr. Holmes' answer, and I don't want to misquote him, but the point I want to raise is this: if there are two schools of thought here, one in favor of legislative enactment to control production of gas and oil, and one opposed to legislative enactment, and as I said, if that should be the attitude of the Gulf Company I would like to have the benefit of the reasons behind it.

A. I will undertake to state my views. I am not authorized to talk for the Gulf Company, but I think I know the attitude of most of the directors who have control of its affairs. In the first place, there is an antipathy on the part of the lawyers connected with the Gulf organization to any more state control of its business than is necessary for the proper carrying out of public policy. In other words, it does not want its business run by the Railroad Commission or any other commission, but would prefer to have its business run by its directors. In the second place, the attitude of Mr. Nazro, who is head of the Gulf Production Company in Texas, is that economic waste ought to be prevented, and that it can be prevented by regulating the matter of gas, and by also regulating the manner in which oil shall be taken from the ground, but he thinks that is as far as a commission ought

to go. Moreover, he is apprehensive with reference to these laws of Texas—the anti-trust laws—which are so general in their terms that nobody can advise anybody when they are being violated. He is also unwilling to enter into any agreement with reference to proration. When, however, when proration has been ordered, he has in all cases obeyed that order without any agreement or anything of the kind, and he simply goes ahead and does it. The situation over in East Texas was that anybody who wanted to violate the proration order came to Austin or somewhere else and instituted a suit, with the effect that anybody who wanted to violate the law went ahead and violated it, and placed upon Mr. Nazro and others the necessity of either producing offset wells in violation of that order, or subjecting themselves to suit by the lessor with reference to that land. I think that is a statement of Mr. Nazro's attitude in regard to that. Of course, he could better speak for himself.

Q. I have this theory in my mind, that it might lead to a situation that would be against the best interest of this state if this commission was created and given such authority. Now, would the creation of a new commission such as provided in the Woodward Bill, giving to it the broad powers of policy with regard to withdrawals of oil and gas, and authority to enforce its administrative orders, would it not probably create a situation that would in effect emasculate and void what anti-trust laws we have?

A. Of course, the Railroad Commission under no condition should formulate the policy, and they could not formulate the method of enforcing, because that obligation is up to you. In so far as this involves the matter of the anti-trust laws, assuming that we have any anti-trust laws, I would state that any law which permitted agreements would, or might, have the effect necessarily to come in conflict with some of those provisions, and as far as I am individually concerned, it seems to me in the University Field, as in many other fields, there is one sensible way of bringing out that oil, and that is as a unit, and it has always seemed to me that public interest would be subserved by authorizing people who are operating in

a common pool to come to some agreement as to how the oil in that pool should be produced, so long as it is not unnecessarily expensive and is produced so as not to destroy the field. Many of the companies, including the Gulf, do not believe they can make any such agreement without violating these laws, therefore, do not make agreements, and I think, myself, that whatever effect it might have upon the anti-trust laws of this State, people ought to be permitted to operate their business in an economic way to serve the public best and conserve the natural resources of the State.

Q. One other question, Judge Batts. You are familiar with the Danciger case, are you not?

A. Yes, sir.

Q. You are generally familiar with the terms of Senator Woodward's Bill, and presupposing that the Supreme Court may sustain the question as raised by the Danciger Oil Company on the constitutional question and features involved, would it render inoperative the working of this new commission to be set up by the Woodward Bill?

A. It seems to me that there are some provisions in this bill which are unnecessarily general, rather than giving authority about which no question could exist. I don't know that I could offhand tell all the constitutional questions involved in the Danciger case, but in so far as some of them are concerned, I have definite views. For instance, one of the points made in the Danciger case is that it is not constitutional because it violates that principle in the law of Texas which authorizes an owner of any part of an oil pool to get whatever oil he can get out of that pool. It looks like to me that that is one of those things that can come properly within Legislative control. Our present rule upon the subject is one that has risen out of a necessity of the matter. It brings about a condition where there are conflicting interests in the property owners, and legislation which would give to every person that to which he is equitably entitled in that pool, would seem to violate no principle of constitutional law or natural equity. I therefore say the probabilities are that the court, viewing it from that point, would not sustain that proposition in the Danciger

case. In so far as they make a statement to the effect that the authority the Railroad Commission undertakes to exercise was not conferred upon the Railroad Commission, the point is entirely well taken from my standpoint.

Q. That is all.

Senator Neal: May I ask a question?

The Chairman: Yes, Senator.

Questions by Senator Neal.

Q. As Chairman of the Board of Regents of the State University, what is your contention before this committee with respect to the oil situation?

A. Senator, that which we brought before the Committee was this: that in the Reagan County oil field, the Big Lake oil field, gas was being produced at the rate of one hundred and ten million cubic feet a day; that was being turned loose, most of it, into the air, without any beneficial use, except bringing this oil to the surface. I undertook to demonstrate that some of those wells were using 2375 cubic feet of gas to bring up a barrel of oil, and some were using 7940 cubic feet to bring up a barrel of oil. I am asking the committee, the Legislature, to invest somebody in this State with the authority to determine what would constitute an allowable waste, if we may use that phraseology, and what would constitute a waste that ought to be stopped.

Q. You are complaining, then, of gas waste, and not of oil waste?

A. I am complaining specifically, of course, with regard to that gas waste.

Q. Does the University contemplate both a development of gas and oil in its lease?

A. Yes, sir, together. Practically all of the leases made in the State refer to oil and gas. Now provision is made in this lease for a royalty upon the oil produced, and a royalty from the gas saved. Now I think probably a question arises there whether the contract covers a matter of gas that goes up into the air and evaporates. We are entitled to a royalty on that which is saved; we are entitled to a royalty on the oil. Now has the lessee the right to turn loose any of our gas into the air without paying for it?

Q. Is this gas wasted—going into

the air slowly, or is part of it being burned?

A. I think probably all is being burned, although I don't know. The amount of it going into the air is probably such that it would be unsafe to turn it loose without burning it. From our standpoint it is the same, whether turned loose directly into the air, or burned.

Q. Is it wet or dry gas?

A. It is wet gas, from which gasoline is extracted, before being burned or turned loose into the air.

Q. Do you receive a royalty?

A. Yes, we get a royalty from the gasoline.

Q. Does the Railroad Commission authorize the making of carbon black out of this gas so long as it does not constitute waste?

A. There is some such provision as that in the statute.

Q. And the gas that is being wasted, do you or not advocate the burning of the escaping gas after the gasoline has been extracted for carbon black?

A. I don't know whether they can make arrangements for it to be used for the making of carbon black. It is perhaps not possible to make such arrangement because the carbon black industry has probably been over done like others, but I want to do is for some impartial commission to consider all of those facts and not permit it to go into the air or be burned unnecessarily.

Q. Do you know whether or not, Judge Batts, great quantities of carbon black are now stored in this State?

A. My understanding is that there is a very great quantity of it that has been made and for which the sale is extremely limited.

Q. I understand there are many tons now being stored?

A. I think that is the case.

Q. Is it your opinion that the interest of the State of Texas and therefore the interest of the University would be better served without proration and permitting the manufacture of these two products, gasoline and carbon black, in which royalty rights and equities are retained by the University, as it is being prorated now?

A. The Railroad Commission indicated an amount which could be produced, I don't think very much

attention has been paid to it. There has been a reduction in the amount, but whether it conforms to what the railroad commission said or not I could not say.

Q. It is prorated as to all?

A. It is under the proration order, yes.

Q. You think there should be some restriction as to the waste of gas?

A. Yes, sir, I am pretty sure there ought to be, because it is very manifest, it is being unnecessarily used.

Q. Can you do this without restricting too much the production of oil?

A. I call your attention, Senator, to these facts that 1-C at eight thousand nine hundred and eight feet produced six thousand barrels of oil, and eight thousand barrels of oil a day with a ratio of twenty-three hundred and seventy-five and 1-B produced twenty-two hundred and twenty-two barrels of oil a day and it had a gas ratio of seven thousand nine hundred and forty, and they are six hundred feet apart. That is to say my position is that if these wells are deepened are properly handled that that gas ratio can be cut into one-third or one-fourth. For instance that twenty-two hundred and twenty-two barrels of oil used seventeen million six hundred and forty-two thousand cubic feet of gas while the six thousand barrel well used fourteen million feet of gas.

Q. May I ask who are the lessees?

Q. The Big Lake Oil Company and the Texon, and Group Number One Oil Corporation under the control of the Continental.

Q. Are there any small operators in the field?

A. There are only two operators in that field.

Senator Rawlings: I want to ask you just a few questions, I want to impose on your time just a little bit to see if I cannot get some information.

Questions by Senator Rawlings.

Q. I, as a Legislator, occupy the position somewhat of a jury who is going to answer some special issues after while. We have several matters to answer. One of the first is whether or not we are going to



create a new commission. I take it that probably your view is that a new commission is necessary?

A. I might clarify that by saying that until these conservation acts are in effect that more time would be required than the railroad commission could apparently give to it at that time. I would not think that condition would last for a very great length of time. It seems to me that after these facts are ascertained they can be followed without much difficulty.

Q. Is it your opinion we could get along with the present commission rather than create a new one?

A. It seems to me like it is possible to do that. I assume that a large part of this business would be attended to by some capable individual who knows about these things, get hearings that have to be conducted by the railroad commission, or whoever is the conservation committee.

Q. As a matter of fact they do delegate those matters to experts?

A. Yes, sir, except the hearings, that they cannot delegate.

Q. They are governed largely by the recommendation of the master, as it were?

A. I assume that to be the case, they ought to.

Q. Assuming that this Legislature takes the view that a new commission might be created, you are a student of political economy, do you think an appointive commission or an elective commission would better serve?

A. It looks to me like in a matter of this kind which needs so much of business capacity and technical knowledge that the chances would be much better of getting the right kind of men by some one qualified making the selection rather than turning it loose to the political conditions which would necessarily exist in the State.

Q. You think a member of the Legislature could justify that position, back home?

A. You are getting back to the proposition I am making, it looks rather to be a question of quality rather than a question of capacity for the discharge of the duties. I think you could justify back home anything that was right.

Q. If a new commission is created would you recommend as to the

duration of that commission, that is make it a temporary one?

A. It might be possible, yes.

Q. Could you gather any idea, I realize it would be largely an estimate, because we don't know what the condition is going to be in the future exactly, but could you give me any idea about what length of time you think a new commission should hold effect?

A. I should think you are up against this situation, you will, I presume and hope, pass a conservation act at the present session of the Legislature. If you get that act passed you will do something that has not been up to this time in the matter of Legislation. I imagine you will have to amend it to meet situations that arise, or the rulings of the court. I therefore believe that if you are going to have any limit to this law or to the term of the commission that it ought to be passed at the next session of this Legislature.

Q. It would be beyond the next regular session of the Legislature?

A. Yes, sir.

Q. We have had several witnesses on this stand. Some of their testimony consisted of very general statement, some of them have given us technical information about strata, etc., none of which has been worth much to the Legislature in dealing with a technical question.

A. Some of it has been very pertinent I think.

Q. Most of them assumed a condition to exist, which I do not have any occasion to question, but one of the things I would like to settle in my own mind is something about the extent of the waste that is being permitted in the oil fields of Texas, that we are called here to correct. I realize that a certain amount of waste will naturally be attendant upon the operation of oil wells in any case, and unnecessary gas pressure be used. Are you sufficiently familiar with the different oil fields in Texas and their operations to give us some definite idea about the wastage, whether it is small, infinitesimal, or excessive, or whether there is a condition we should correct?

A. I don't think there is anybody that would go over every field in Texas and tell you how much waste is going on. I do think there is a general consensus that the waste

is very large, and it is taking place in almost all of the fields of Texas, with probably the exception of the Yates pool and some places that have been properly developed by the Humble Company, where all of the gas is saved, and also, of course, there are a number of strips or marginal wells that cannot be operated upon any condition other than those which now exist. In every field in Texas that has been developed prior to the efforts to prorate I am pretty sure there has been a tremendous physical waste, the excessive takings of oil from the ground and the taking of it too fast. That was demonstrated by Mr. Foran the other day; facts which are entirely familiar to those people who have studied the oil business, that unequal taking will result in the amount of recovery being materially reduced, because improper takings do not get all of the oil. Now sometimes, according to the understanding engineers who have talked to me that can be partly controlled, but only in this way, and that is by conservation and returning to the ground the gas. In some of the fields, as in the University fields, that at the present time is neither necessary nor possible. The point there simply being that this oil cannot be taken out so fast that the water cannot follow it up and keep all of the crevices in which the oil has been filled up. I believe that the general impression among the oil people in Texas is that the amount of gas that is being wasted and the amount of oil that is being put in a position where it can never be recovered is something stupendous.

Q. In other words, you do subscribe to the theory of an underground waste as discussed by the witness Foran?

A. It is easily demonstratable.

Q. You are satisfied that that waste does take place?

A. I am satisfied that everybody is satisfied that it does, that knows anything about the business.

Q. Do you think it is a proper function of the Legislature to undertake to correct that waste?

A. It is within the power of the Legislature and you should not permit it to be put in a place where it cannot be used.

Q. You have referred to that as a resource of the State?

A. Sure.

Q. I don't know how you arrive at that conclusion. I don't know but what you are correct, but it seems that the court has very recently handed down some decisions that they are not resources of the State?

A. These things perhaps have not been expressed in decisions, but I take it that there is a proprietorship by the State of any piece of property in the State, that it never at any time gave up all that which it owned; that when private ownership of land is created that it retains eminent domain. We never did put anybody in position where he can go and slice off an acre of Texas and throw it away, or do anything like that with anything that makes it a physical part of Texas. That theory is that under every acre in Texas and every piece of property in Texas that the State of Texas has an interest such as it can protect.

Q. If title is just a superior right, a temporary possession—

A. Title here is such right in the land in the State of Texas has passed up to the individual, and one of the rights that Texas has is to tax that property and not permit it to be thrown away, just as it has a power of taxation, the condition of the power of eminent domain.

Q. Now having your definite ideas on the underground waste and your thoughts on that line, and if the Woodward Bill, and perhaps some other bills here undertake to cure that evil and stop that waste by limiting the amount of oil that may be taken out of any particular well, which I guess they commonly call proration, do you know of any other way by which we could prevent that waste, the underground waste, other than simply put a limit on the amount of oil that can be taken out of a well per day?

A. That is one way. Another way would be to unitize, a particular field, and if carried out in the proper way that would produce the most oil. Then there is still a third way which had it been incorporated in the Cranfill plan of not considering excessively the matter of the wells but considering the area which probably is more logical.

Q. Do you not think that the Legislature by its enactment should prescribe the capacity of a well

which should be accepted from proration, I think they call them marginal wells, say a well producing a hundred barrels per day or less, should be exempted from the scheme of proration?

A. If it is possible to do it I would like to see it done, but it is not, that presents another one of these constitutional questions that we have continually to consider when we pass any legislation.

Q. Would it not be better to leave that discretionary with the Commission, if it can be done, rather than the Legislature trying to fix a definite line?

A. I think so.

Q. In addition to the underground waste which you think we are justified in dealing with, what other waste do you know of that is being permitted in the oil fields, except the excessive use of gas to produce the oil with. What I mean ordinary sense of waste, as it appears to me is that oil is being brought to the top of the ground and not resulting in any beneficial use.

A. There is another definite waste there which would be considered every time you tried to pass upon this matter and that is to say that any condition which requires that oil should be put in storage requires that a part of the oil should be wasted.

Q. Do you mean that waste is an incident to storage?

A. Necessarily.

Q. I believe it is not very substantial, it is, a small percentage of waste.

A. When you apply it to a few million barrels of oil it is extremely substantial.

Q. My thought is this: Would it be wise for us to undertake to go far enough in enforcing waste and say that storage of oil is waste on top of the ground?

A. No, sir, not always. There has to be storage to conduct their business, but when you get beyond that, merely for the purpose of having some oil there so you can speculate on it in the future, the result is that part of it goes up into the air, the balance is injuriously affected, its gasoline contents is lowered, and if you keep it there long enough the loss is very substantial indeed.

Q. Do you then think we should consider that as one of the elements

of waste that we are to prevent, though we might not prohibit it entirely, but put some limitation on it?

A. I should say that production of crude oil that so far exceeds the need for crude oil so that it requires the placing of a part of it in storage would indicate a waste that might be controlled by the Legislature.

Q. You don't mean to say by that, do you, or create the impression that we should deal with the market demand for oil as a waste?

A. No, sir, I think market demand is a matter that does not depend upon merely physical facts, but depends in large measure on the price at which it can be secured. Market demand does not seem to be a proper thing to consider at all. If you produce oil beyond the current need for oil requiring the putting it in storage you are then permitting production of oil under conditions that bring about waste.

Q. Well, I will tell you frankly that I can't tell the difference between current need and market demand, but we will not argue about that?

A. Senator, isn't it a fact there would be a much larger demand at five cents than there would be at a dollar and a half?

Q. I think that would naturally follow.

A. And therefore the market demand depends upon price. The current need for supplying the world with gasoline certainly does not so much depend on price.

Q. I think if automobiles were selling for fifty dollars apiece there would be a bigger demand than there is now. We have now an underground waste and we have a waste incident to storage. Of course, there is a waste in the crude petroleum itself.

A. It goes up into the air without doing anybody any good.

Q. Do you know of any more forms of waste with reference to the crude petroleum that is being committed besides the improper manner of taking it from the ground and the storage? I do not have in mind any technical question at all.

A. I can't think of any other.

Q. Are there any practices in the field,—for instance, where oil is permitted to run out in earthen tanks?

A. That is not permitted at the present time.

Q. It isn't?

A. It is not, so far as I know, it is not done.

Q. You don't know of any?

A. That would be a storage that is more wasteful than the other kind.

Q. You don't know of any practice or negligent way where oil is permitted to escape, or anything of that kind?

A. No, sir. Of course, anybody that has been around an oil field will know it is conducted in an extremely wasteful and uneconomical manner, but to get down to a specific statement of what all that consists of, I am not capable of doing it. That would be economic waste rather than physical waste.

Q. As to the gas wastage, the wastage occurs there by using too much gas to produce oil lift a barrel of oil to the surface?

A. That is one of the ways.

Q. And another one would be permitting it to escape into the air?

A. Well, when it performs its function of bringing up the oil it is then used. Of course, it can be controlled or it can be turned loose into the air.

Q. What I want to know, one of the points, is this: Necessarily there is a minimum amount of gas that it will take to lift a barrel of oil to the surface?

A. It has either got to be raised with gas or rock pressure or raised with a pump.

Q. The gas used to lift the oil to the surface, is there a way of recapturing that gas, or a substantial part of it?

A. All of it.

Q. Some of it might be converted into useful purposes?

A. All of it. It can all be used after it performs that function.

Q. It can all be controlled and all be utilized for whatever purpose gas can be used for.

Q. And that without any injury or damage to the well itself?

A. Yes, sir.

Q. Or with the man's right who is producing the well?

A. That is true.

Q. Now, then, I don't care for a long technical explanation, but could you tell us generally how they can recapture that gas and stop the wastage?

A. In bringing the oil up to the top, it is mixed in with the oil and is captured right at that point, and

handled just like the oil is handled. It is all under control.

Q. Would you not consider it a form of waste,—there might be some constitutional barrier that would keep us from dealing with it,—but assume arbitrarily that here are two one hundred acre tracts of land; oil producing property, that it has been determined that a well to each ten acres is sufficient to economically develop that one hundred acre tract. Of course, this illustration has reference to a proven area. Suppose each owner of the two one hundred acre tracts has his ten wells. Now, then, would it not be a waste to permit one of the owners of one of the one hundred acre tracts to drill fifty wells there rather than a sufficient to develop his property?

A. What happens in a case of that kind is that one of those owners gets more than he is equitably entitled to, although he gets what under the law of Texas is his legal rights?

Q. But getting back to the proposition, is there not a waste? I mean, in that he uses an unnecessary amount of energy, gas energy, or whatever energy produces the oil, by reason of the fact he has drilled an excessive number of wells,—does that not raise the question of waste that we might deal with?

A. I haven't given consideration to that except that in that Ohio-Indiana case that very condition was one of the bases upon which the Supreme Court maintained the law.

Q. Judge, it seems funny to me, I can't solve this proposition, that we have authority apparently to regulate oil after it is brought to the surface and say that a man who has a fifty thousand barrel well, we can pinch him down to 500 barrels and that is in the interest of conservation, and we are trying to hold it down to a level of so many thousand barrels in that pool, and make them pinch it down, and here are people in a mad frenzy bringing in new wells every day,—that if we could conserve it afterwards, why can't we by the same reasoning conserve it . . .

A. (Interrupting) All of that comes from the rule of law that has been recognized in Texas to the effect that an owner of land can get whatever he can out of it with the result that he may create physical waste, and where he necessarily gets something to which he is not entitled

except from a purely legal standpoint. I think the condition you have indicated there is one of those matters easily within the control of the Legislature.

Q. You think it is?

A. Yes, sir.

Q. This waste has been outlined here and about which you have testified, is that being permitted in the fields generally in Texas today, or is that confined to some particular locality?

A. My understanding in the matter is that we haven't up to the present time given substantially any attention whatever to waste and that during the entire thirty years of our oil history we have had that wasteful condition in producing our oil.

Q. Do you think that practice exists in most of the fields in Texas today?

A. That is my understanding.

Q. Do you have any idea of what the loss in dollars and cents is?

A. It is too big for anybody to comprehend. You can't use enough ciphers to indicate it.

Q. You mean the loss occasioned by the waste now taking place?

A. Yes, sir, and that has been taking place for thirty years.

Q. Do you think this Legislature would be justified in passing some statute that would undertake to conserve that waste.

A. I think the Legislature would be criminally negligent if it did not.

Q. I believe that is all.

Questions by Senator Woodruff.

Q. Would it be necessary for the Legislature to take into consideration the market price of crude oil, adequately to bring about conservation of these resources?

A. You can bring about conservation without taking it into consideration at all.

Q. In your opinion, as public policy, under the present condition of the industry, do you think it advisable for the Legislature to go far enough into this conservation program as to stimulate the market price of crude oil?

A. I assume it is no part of the business of the Legislature to try to pick into these economical questions at the present time, but I do feel that a necessary result of a proper production of oil would be the bringing up of

the oil at the price somewhere commensurate with its intrinsic value.

Q. Then Judge, the Legislature should concern itself, in your opinion, solely with the problem of ultimately recovering the greatest amount of the oil and gas and converting it to beneficial uses regardless of the price?

A. I may make this statement, Senator: That a proper application of such laws as you make will bring about conservation of our oil and gas, and that a proper conservation of our oil and gas will result in a price such as will be satisfactory to the oil operators, to the lessors, and to the people of Texas who depend largely upon those taxes for the support of their public institutions.

Q. Well, if it be shown that in East Texas, if it were unitized, as you suggested a while ago, all producers in that area there cooperating for the purpose of getting the greatest amount of oil at the greatest speed possible commensurate with ultimate recovery of the greatest amount of oil, did not reduce the amount of oil produced in the area over there, that would not reduce the amount of oil on the market and consequently not stimulate the price.

A. Senator, there has been a feature which has seemed to me to have a great deal to do with the price; people over there have been selling for almost nothing oil that they hope to produce in the future; present prices are not predicated upon present production but upon somebody's future hope.

Q. In other words, they have sold "short"—is that the term?

A. I am not familiar with those terms, but they have sold that which they have not yet got.

Q. Have you read the Woodward bill that is pending in the Legislature now?

A. I have read it, yes, sir.

Q. In your opinion is it by direct implication for the Conservation Commission to take into consideration the supply and demand in making out its program or its orders?

A. I would not like to pass judgment upon that without specific study of it in regard to that particular matter. I have this kind of a feeling with reference to the question of proration in the State: That when you will have conserved and brought about proper regulation of production and then applied the rights which you have to control

transportation agencies in this State you can bring about that which ought to be brought about in the matter of letting everybody have that to which he is entitled.

Q. You are probably familiar with or have heard something about the three-court decision yesterday in the McMillan case?

A. I read what was in the paper.

Q. Does that indicate to your mind and do you think independently of that as a lawyer it would be possible for this Legislature to legislate upon the question of economic waste directly?

A. Senator, you are presenting a question which I do not believe anybody can answer. Nobody has been able to define what can be done under the police power of the State, and you would certainly present yourself with certain constitutional questions which I do not think you need bring into your bill.

Q. Judge, digressing just a little bit, I understand—now this is for the information of the Legislature, but not pertinent to this hearing. I understand that several pipe line companies have constructed lines across University lands in West Texas?

A. Yes, sir.

Q. And that two of them have not paid for the right-of-way or the privilege of carrying their lines across the University lands.

A. Yes, I think that is true. They claim the right to go across there without payment and it is our purpose to see that they establish that fact or pay the money.

Q. Well, is there anything that the Legislature, in your opinion, ought to do about that thing at this time?

A. My own judgment is that it is not necessary.

Senator Rawlings: Mr. Chairman.

The Chairman: Senator Rawlings.

Questions by Senator Rawlings.

Q. I want to ask one further question that I forgot. This investigation we are on has a twofold purpose: One is to prevent waste and conserve, and the other is to find out whether there is any collusion in the oil industry which has brought about the condition. Do you know anything of any condition or any such agreement or collusion that exists?

A. Senator, one of the things the

State of Texas is suffering from at the present time is unreasonable competition between big oil concerns and it is going to cost the people of Texas a great deal of money, because ultimately they will have to pay for all these stations and waste in putting down wells that ought not to be put down. I would suggest unequivocally that the relationship between the big oil companies in Texas is such that there is no possibility of collusion.

Q. So far as you know, you have not discovered any evidence of open violation of the anti-trust laws?

A. No, sir; I do not know of any violation of the anti-trust laws.

Senator Hopkins: Mr. Chairman.

The Chairman: Senator Hopkins.

Senator Hopkins: I have just one other question.

Questions by Senator Hopkins

Q. Every time we pass a bill, Judge, it seems to involve the question of taxes, and that is necessarily an interesting question.

A. Whenever you make a trade you have to take that into consideration.

Q. Now, Section 4 of this bill provides for the administration of this new commission by a tax of one-fourth of one cent per barrel in addition to the present gross receipts production tax. Do you have any idea what sum of money that would raise—would it be detrimental or an unjust burden upon the interests to be affected thereby?

A. Senator, the oil industry in Texas ought to get benefit from this conservation and if they get benefit from it they ought to pay for it.

Q. I just asked the question because it will surely be raised in the future. One other question: It has been stated to me, Judge Batts, by competent geologists that controlled production in the field could be satisfactorily obtained and maintained if the enforcing authority had the power to control just to the extent of, say, seventy-five per cent of the potential, the thought being advanced that if it had that power to control up to seventy-five per cent of the potential it would still leave in the hands of the land owner or leasee about twenty-five per cent, which could not and would not be regulated, which leads me to the question: Would you advocate that or think it advisable if there is such

a limitation as to regulate their control over production to, say, not over seventy-five per cent of the potential.

A. Senator, I don't know how to get at that per cent. There is one factor that seems to have been given little attention, and that is the extent to which instead of control after the drilling of wells, which would of course involve the treating of those wells as either a single unit or as a number of units within that unit. That has not been discussed. I think it worthy of consideration. As to whether you can limit the number of wells that can be put on twenty acres, say, and have one-fifth belong to one person and four-fifths to another, it would seem to me possible to put, say two wells down and divide in proportion to their interests.

Q. In your opinion that might not be an unreasonable limitation to place upon a new commission, if created?

A. I don't know how to get at any particular percentage there, but this matter of regulating the drilling as distinguished from regulating production after drilling has been done is one of those things I think you can well give consideration to.

Q. Just one other question, and it is a little foreign. Senator Neal was asking you some questions with reference to development out there and where they have killed or ceased production in some four or five wells.

A. Senator, I don't know what has induced action with reference to those, but in each of these cases I assume that has possibly been the basis for it. I know as far as Group Number One Oil Corporation is concerned it brought in one well which it was impracticable to control and it was killed on that account. I will state that certainly the Big Lake Oil Company has been doing what it could to bring about proper conditions there, and I have no right to state that Group Number One Oil Corporation has not. I do state, however, that we would like to see to it that they be made to do what is right if not voluntarily done. I will state further that they have been taking a long time to do what I conceive to be right.

Q. That is not applicable to the Big Lake Company?

A. Not so much. They have pro-

ducing conditions there much better than formerly.

Questions by Senator Purl.

Q. Judge, it was commonly reported and stated on the floor of the House when we had up the Common Purchaser Bill that it might vitiate or annul the anti-trust law.

A. I don't see how that nullifies the anti-trust law.

Q. Now, one other question. The President of the Texas company testified here yesterday. Now, do you happen to know what the attitude or policy of the Gulf Production company is upon these measures?

A. Senator, I undertook to state what I understand to be the attitude (answer interrupted.)

The Chairman: Pardon me, the Judge has discussed that thoroughly.

Senator Woodward: Mr. Chairman, we are not going to get through with Judge Batts, and I move that we recess until afternoon.

Thereupon at 12:30 o'clock p. m., the committee rested until 2:00 o'clock p. m.

2 P. M.

The Chairman: All right, Senator Woodward, do you want to question Judge Batts?

Senator Woodward: No. Senator DeBerry, I believe, was questioning him.

The Chairman: Were you questioning, Senator?

Senator DeBerry: I asked permission to do so.

The Chairman: Go ahead, Senator.

Questions by Senator DeBerry.

Q. Judge, do you think there could be an adequate conservation statute passed without placing in it as one definition of waste "oil that is produced in excess of a reasonable market demand?"

A. Yes, sir.

Q. Sir?

A. Yes, sir.

Q. Would you be for a bill that had that specification definition in it; that is, would you recommend that go in to a bill?

A. Well, if I were undertaking to pass a bill, I would try to eliminate as many questionable features as possible.

Q. That is why I am asking these questions.

A. It seems to me there is no occasion to use any such phraseology as that, inasmuch as the same end could be accomplished by limiting production to that which is currently needed, without increasing storage.

Q. Well, if you are going to say that which is currently needed, you have to take into consideration markets?

A. I distinguish between that which could be used up by the people who use up that gasoline and other products, and that which might be bought speculatively and for other purposes by oil corporations.

Q. There would be that difference in using the words "market demand"—I can see that distinction.

A. Whenever you go beyond — —

Q. A conservation bill would be adequate if it did away with physical waste as discussed by you this morning?

A. Whenever you go beyond the point of producing oil beyond that which is consumed, you necessarily place it in storage or turn it loose, and if you place it in storage, you waste it, and if you turn it loose, you waste it.

Q. If you could avoid physical waste, and then gloat the market and make oil sell for five cents a gallon, is that physical or economic waste, or partly both?

A. I don't see how you could produce to the extent you have indicated there without having physical waste.

Q. If there were enough oil field, and everyone was down to where you could produce it without waste of gas, and could plug off the water, there could be more oil on the market than the public could consume?

A. My suggestion is it be limited to that portion which the public can consume.

Q. How far are you from recommending that one of the definitions of waste is "any oil produced in excess of the reasonable market demands"?

A. To me they do not mean the same thing. The market demand will depend largely upon what oil can be produced for. Many companies could afford to buy oil at present prices, and store it for future use.

I am suggesting it be confined to current consumption, which would not require it to be stored.

Q. Wouldn't you say current consumption plus reasonable storage?

A. Of course, there must be some storage, or the business cannot be properly conducted.

Q. You made a statement this morning that laws should be written so they would be subject to the least question possible. Now, if a bill did carry a clause defining as one of the definitions of waste, and giving the commission the right to use that discretion in using that provision, if it were to have it in it—that definition "that waste is any production of oil in excess of the reasonable market demand," would that bring up a debatable statutory or debatable constitutional question?

A. It is one of those things that is debated. Therefore, it is one of things that could cause debate, and my thought is if you can obviate question and debate about these matters, and put up a law that everybody could obey, you would find a very different attitude on the part of many of these people who are now questioning the policy we are pursuing.

Q. The fact that it is debated today is conclusive proof that it is debatable?

A. Yes, sir.

Q. I want to go further on that. To what extent would I be justified in opposing such a provision? Now, if it were clearly written that this commission would have a right to restrict production, so taking into consideration, or using as their motive, that oil was being produced in excess of a reasonable market demand, do you think that obviously would raise a good constitutional objection?

A. I don't pass upon what the result of the debate or litigation would be.

Q. Sir?

A. I don't pass upon what the result of the debate or litigation would be, but I am undertaking to suggest it would be the cause of litigation, and I think it is one of those causes that could be obviated.

Q. Wouldn't you care to say—I don't want you to say it unless you want to—

A. My reluctance is based entirely upon the circumstance that I



do not know all of this law, and upon the knowledge that if you can shy around a lawsuit, it is the sensible thing to do.

Q. You would not go far enough to say that would be a good lawsuit?

A. It would be a matter about which good lawyers could differ.

Q. One more question on that line, and I will be through. If a bill written—take for instance, the Woodward Bill, if I were to decide that it obviously does indirectly what this clause I have been repeating to you does directly, would it be a cause of litigation?

A. I don't imagine you are going to entirely escape litigation at all, but I do think as many manners as are debatable ought to be left out as possible, because I believe a bill can be drawn which will be proof against any litigation which will be had.

Q. One more question, Judge Batts. I have no inclination in the world to criticize any bill in particular—I mention the Woodward Bill, because we designate it that way to keep it from getting away from the other, not that I am scrapping or criticizing his bill, but that is one of the bills up for consideration. Have you considered that bill closely enough?

A. No, sir.

Q. You have not considered that bill closely?

A. I have read it as the proceedings were going on here. If I had any criticism to make of it, it would be in the way of changing the phraseology of waste, and trying to make those parts which are indefinite as definite as language could make it, and I would try to make it so clear that there could be no question about what the commission could do. That is the basis upon which the decision rendered yesterday was based—that is, as to whether you authorized the Railroad Commission to do certain things. What you authorize them to do should be in language about which there can be no question, as nearly as possible.

Q. That is what you mean by dodging litigation?

A. Yes; it is very important to those people who are trying to obey the law, to have it as clear as possible.

Q. The reason I was asking the questions in regard to this bill—I

am not a lawyer; the closest I ever was to being a lawyer, I had a first cousin who was. I think it is utterly obvious if you read that bill carefully, that if you are interested in litigation to that extent, I think that bill clearly writes indirectly "economic waste" into the face of it. There are those who differ with me, but I think a man who can't find that in it is not as good a lawyer as I am, and I am not a lawyer at all.

A. It differs from the present law in this: The present law distinctly states "economic waste" shall not be considered. It, at least, eliminates that.

Senator Purl: May I ask a question?

The Chairman: Senator Purl.

Questions by Senator Purl.

Q. Judge, I know you are a very busy man, and I hope I am not asking anything unreasonable of you. I wonder if you would have time between now and Monday week to give this bill some study, and give us the benefit of your constructive criticism of it?

A. I am always glad to serve my state in any way I can. I think what is going to be required here is some sure enough work by sure enough lawyers, and you have an ample number of them in this Senate.

Q. But your long experience as an attorney, and your familiarity with the oil industry, I am wondering if you would give us the benefit of your constructive criticism of this measure?

A. It is so much easier to give criticism than to construct, but I will be glad to give you any help I can.

Q. Will you read that bill and give us your idea on it. I would certainly appreciate it, and I am sure the rest of the Senate would.

A. Yes, sir.

Senator Purl: Thank you, Judge.

Senator Woodward: In doing that, I would be glad if you would change the phrasology of the definition of "waste" in any manner that you think would probably give a better description than we have it in now.

A. When you pass a bill in which large penalties are to be assessed, you can't predicate those penalties on language which is not definite and clear.

Q. It is like a criminal statute in that.

A. It is of that character, yes.

Q. In making these definitions, I had in mind—or rather, in studying these definitions, I had in mind the fact that we had to make it broad, and with enough elasticity so as to get away from the question that that we were letting the Commission legislate,—

A. You will have plenty of troubles.

Q. —and avoid that as nearly as we could, and to define them in such broad language that the Commission in the exercise of its findings and discretion could bring certain acts under this general definition. I didn't feel like just setting out just what the Commission could or could not do, because conditions might arise that we did not cover.

A. I think you are going to find it necessary to make quite clear what you pass up to the Commission to do, because the decision rendered yesterday was predicated upon the absence of authority delegated to the Commission, and I believe these definitions and the authority given to the Commission should be made so clear that there can be no question about what is meant.

The Chairman: Any other question of Judge Batts?

Senator Woodul: I want to thank Judge Batts for the compliments he passed upon the lawyers in the Senate.

A. I was just passing on information that everybody already knows.

The Chairman: Members of the committee and visitors, this is Judge Dabney of Houston, who will discuss the Woodul bill. Judge Dabney is before the committee primarily to discuss the bill without being sworn, and without discussing the oil situation in general, he merely wants to discuss this bill.

Judge Dabney: What is now advocated as Senate Bill No. 3; it is not a bill to bestow right, except the right to protect one's self. It would be unconstitutional to take anything from one man and give it to another. There has been a widespread misapprehension of what respective rights all persons have, and rights upon a given stratum or upon a given pool. The development of the oil, that is, the—the statement of what the law is by the court has much

got ahead of the remedies which are now given by our statute. Our statute limits man's rights to some extent instead of providing a method for the importment of those rights, consequently the main object of this bill is to remove the impediment existing in the law of Texas, in the statutes of Texas, relating to procedure so that every man for himself, big or little, having a right will be given an opportunity to enforce that right, and that is the sole object of the bill. At the risk of being thought dogmatic, or attempting to teach what the lawyers here, or many of you already know, permit me to state in the briefest, worst possible way, and it is for the sake of brevity, what the rights are now as declared by the court, the Federal Courts and the Texas Courts.

Inter, say, or stratum in or on a given pool. The purpose, of course, is this, that if a man on a stratum or on a pool is entitled to use his right there only so far as he does not injure some other man's right, proceeding with reasonable diligence. You will pardon me, those of you who are not lawyers, for using a few technical terms used by the Supreme Court of Texas in relation to what these rights are. Those of you who are lawyers will explain the meaning to you, those of you who are not lawyers.

First that every land owner or fee lessee under him and exploiter under him as, unless restricted as to the exploiter, as a determinable porpor-teal fee and freehold, a heritament in the oil and gas under his land. It is determinable because it ends when the oil and gas is withdrawn. It is freehold, his right, his fee, and he owns it. That being so the next inquiry is—can another man withdraw that oil or gas, both being fugacious, especially gas, from under his land and become the owner of it, when it is brought to the surface of course it is personal property. Yes, and no. No, if the owner is willing to emphasize reasonable diligence. Yes, if the owner is not willing or able to exercise reasonable diligence. Now, gentlemen, that is an ownership and right to that property and it is a right in safety, but still with a characteristic of support, you might call it, or common interest in all of them as against a given stratum or a given pool. Consequently it results as is

now emphatically declared in an opinion of the Court of Civil Appeals in January, 1931, at Fort Worth, Judge Duncan, giving the opinion, and the opinion being unanimous on these points, that they have a common interest in preserving that pool and stratum and bringing about an unwasteful exploitation of it.

Senator Woodward: Is that the Peterson case?

Judge Dabney: Yes, sir, Peterson vs. Grace. It is in the Southwestern Advance Sheet, Volume Number 37, Second Series. You will gather much information from that. Also, as at this time in the Oxford case by the Federal Court, the right of any land owner in that pool can be limited so that he cannot hog the situation unreasonably to the deprivation of the man who adjoins him. That is settled by our courts. Also, in the Ohio case, referred to by Judge Batts this morning, the Ohio Oil Company vs. Indiana, wherein under the laws of Indiana the land owner did not own the oil under his land as we do here. The Supreme Court of the United States has followed the Supreme Court of the State of Texas as to the land title and has held that the man owns the oil and gas under his land, it is his fee. But in Indiana he did not, he only had a right of access. They refused to follow as an absolute analogy, and applied the principles which I advocate in substance. Now that being the case the owners of oil and gas in situ under his land has a prior right without by wasteful process, anywhere on the stratum, whether the adjoining land owner or not, the property shall not be injured, provided that of course he cannot stop the exploitation by doing nothing. He can only stop that exploitation which is wasteful, unscientifically injures or takes off the gas pressure, takes off the gas, wastes the gas, because gas will be drawn for miles providing there is not a lenticular cut-off. He has that right, it is a common right as to the pool, each man owning in severalty what is under his land and his exploiter under him.

Now, gentlemen, those rights are defined as I have stated. This is a complex subject. Now, the courts have declared and ascertained those rights. What is the situation with which we are confronted here in Texas? It is a problem of mechan-

ism, where if you look at the a problem of this sort underlying everything, if we look hard enough we come simplicity. The Legislature in Texas, not this Legislature, but before 1925, adopted Article 4644, which this act amends, and therein they provided first, one land owner would have a right to enjoin against these practices by an adjoining land owner. Their rights are in the pool, there may be a strip adjoining you, and there may be a man a few hundred yards away, and gas may be more valuable than oil. Now the Legislature has retained the right of restraint against the joint land owners. Second, it provides that this right may not be exercised except as against an insolvent, forgetting a fundamental principle of law and equity, that you have by injunctive process the right to restrain any man from taking and carrying off a part of your free hold, whether he is solvent or insolvent, cutting your trees, removing your rocks and sand and what not. Now there are two unseverable obstacles prescribed as a condition for the accession of this right of limitation, and this right under our statutes, that should be removed.

Thirdly, the statute is too expensive, involves too much expense because it provides at the discretion of a court a receiver may be appointed, or a trustee, in most of these cases. Unless there is a question of serious insolvency there should not be a receiver. A receivership should be left to the powers of equity to determine whether or not one should be appointed, but not under this statute.

Fourthly, as far as I know, under the statutes of Texas there is no provision for the appointment of a Master in Chancery unless there be a receivership. Now, you take a whole field—what is your situation? Can a district court sit down without the aid of a master and sift this thing out? It would be interminable, delays, confusion, and what-not. Now, we have a statute in Texas most useful but not comprehensive enough in relation to auditors, providing where accounts or vouchers are involved an auditor may be appointed whose conclusions of fact may be read to a jury and they do not invade the province of a jury. In the Federal Court, without the aid of a

statute, under the name of auditors, in actions in law—I am not talking about actions in equity—it is now the law that in this scientific and complicated situation the court can appoint an auditor whose conclusions of fact can be read to the jury and they are not invasions of the province of a jury. So the Federal courts not having these restrictions under which we labor have a facility and an opportunity to apply the law as it now exists which the District Courts of Texas apparently are deprived of by our statutes. If we repeal the various statutes I mentioned and the restrictions on the appointment of a master and simply say that every right of this sort should be subject to litigation upon the principles of equity, and we know further it would be an immense relief, but it is useful on account of the lack of knowledge of equity and equitable procedure to insert in this statute a simple mechanism as has been done for the guidance of the courts. It will save a good deal of trouble, but the mechanism should be simple. It should not be balled up with a detailed account of how the Courts should proceed other than to refer the courts to the general principles of equity practice, which the bill does.

Now, gentlemen, if we had had such a statute as this, it is plain under the principle established by our courts, the Supreme Court of Texas, the Courts of Civil Appeals, and the Federal Courts, including the Supreme Court of the United States, every individual would have had an opportunity and would now have an opportunity to protect himself. What we propose is in no respect against any proposition before the Legislature, as to proration, as to referring to a commission to determine what is waste and what is not waste. This bill does not attempt to define those things. They are already defined in large extent and they are very valuable. The conservation statute which we now have needs to be added to upon the principles advocated by Mr. Woodward and others, though I have not studied his bill. In that connection please know that I heartily concur with Judge Batts with reference to putting into any conservation statute an attempt to too much, by whatever disguise, fix prices. If it is done,

great constitutional problems—we will run up against that. If it is done, it should be carefully provided, each provision should be carefully segregated so that if it is held unconstitutional will not cause the whole bill to fail.

Now, excessive drilling involves waste, always; inevitably. The more wells you drill the more problems you are up against. As to mixing water, as to taking off gas pressure, and so on, and so on. If excessive drilling is injurious to any man inside of the pool, or working on a stratum—I am not speaking of price, but by jeopardizing stratum, taking off gas pressure, mixing in water, and otherwise as is so largely done now—well, now, that is an injury which he ought to have a right to restrain. If this bill had been upon the statute books of Texas we would not now be confronted with this East Texas situation. Somebody—maybe several, would have at once moved for injunction to restrain whatever was being done upon the same stratum to his injury. If he got an injunction it is appealable; it ought to be appealable. Such bond can be given as is now provided by our equity procedure, without going into that. If reversed, then it is reversed, but he gets action. What do you do now, gentlemen, any of us who have rights? I have some myself; my clients have others; what do you have to do, unless you have careful contracts which I think I have to protect us? You go before a commission or board. Now, I am not talking against commissions or boards. I think some commission, probably a separate one as Judge Batts has so clearly stated, should be set up to make these rules, and the constitutionality of these rules has been sustained by the Federal courts and the State courts. Of course, they have to be reasonable, but the burdens is upon them that attack them. But what we propose is to give a man the right to fight for his own rights. If these rules are fair, well and good, the District court will take them into account. If they are not fair, he does not have to run all over the country, all over the State and try to assemble a large number of people and have interminable hearings in order to get a footing to start his fight. And then what happens? The first thing he

knows he may be enjoined in the Federal court as has just happened, and then he stubs his toe. What are these commissions and rule making bodies? They are nothing but a Master in Chancery appointed in advance whose findings can be set aside by a court. Why not give each court the power to proceed as to a given stratum or pool independently of the commission. If commissions have made rules as to what is waste, and they are reasonable, the courts will have to follow them; if they haven't made rules, the courts do not have to wait for them.

You will pardon me; I am getting old. The State of Texas does not give every man the right to get out and fight for his own rights without hedging him around with a lot of conditions which limit his rights. We were taught when we were law students that there is no right without a remedy, and here we are confronted with a situation where the right is to a large extent taken away by the remedy produced. I have had a long experience—I am not reflecting on any of them, I have had many good friends on some of these commissions—and I think about this thing that one is necessary, probably separate from the Railroad Commission for the reasons stated by Judge Batts, to investigate and make rules where the Legislature hasn't time or is not in session to make the rules. I am not opposing that, but in Washington and here and elsewhere a long experience has taught me the enormous expense, unless a man is representing a corporation that has money, as I was, it is practically the denial of a right to our citizens to get out and fight for himself, by requiring him to fight all these commissions.

Now gentlemen, I wish to say one more thing, two more. First as to practice. I have thought a great deal on this bill of mine, in trying to formulate it and press it. You go into pool, upon a stratum, or what not, you are confronted with the difficulty of parties. This bill does not charge you down to the necessity of bringing everybody in having an interest. No. It simply provides that one person who is injured by excessive drilling, and excessive drilling is injury, or by wasteful methods in the same stratum, any-

where, can sue the person who is injuring him. Now, that person who is doing the injury, or alleged to do the injury, may be driven into excessive drilling by what somebody else is doing, so the bill provides that in such situation the decree of the court shall not restrain the defendant from activity to protect himself against others not parties to the suit. But it furthermore provides that subject to not too much delaying the court anybody having an interest can intervene and put this thing in one basket and so proceed to a conclusion in vacation, or at any time, but with the restriction there must not be too much delay. As Judge Batts, I think, pointed out—It concurs in everything I heard from him; I may have missed something, to have a Commission determine the specific rules for every pool in this State under specific applications is almost an impossibility; that is true. Here we provide a method which prevents the Federal courts from coming in, because there is a Federal court statute which provides that no Federal court shall enjoin the decree of a State court unless, of course, that decree interferes with some decree of the Federal courts; consequently any man could bring a suit under this bill where he was jeopardized and being injured, and if he made just one other party, which he always could do, who was a citizen of the State of Texas, the suit could not be transferred and I don't suppose he would be idiotic enough to try to transfer it on the first section of the Fourteenth Amendment, because the Federal courts have emphatically declared that it does not invade any property right to restrain another man from excessive drilling and wasteful drilling, that it is not inside that and it is not inside of our Bill of Rights stating the same thing. I like simplicity and pardon me for emphasizing this: I like the privilege of fighting for my rights and the rights of my own clients without waiting on any board or any one else. Cooperation is all right, but it sometimes is difficult to get it. That is perhaps an old-fashioned idea. Now the last point I wish to dwell on, I am dealing only with physical waste, not with the question of price, and I am not here to deny that you can affect these oil values with a

public use. Now, it has been contended in the courts that these conservation acts were not intended for the protection of the individual land owner, but only under the exercise of police power for the benefit of the public at large. That has been declared by the Federal courts and by the State courts not to be the case and that the conservation laws are also just, provided they do not depend upon police power alone for individual protection and the assertion of individual rights. Now, I have suggested that in your conservation act if you want to give any commission power to fix prices, you carefully segregate it and provide in the act itself that the unconstitutionality, if declared, of any clause shall not upset the rest of it. To look at it practically, gentlemen, the first question is not price fixing; the first question is conservation. If you have conservation and if you provide a simple mechanism as here proposed, doing away with the restriction the procedure lacks, restricting a man's rights, giving him the right to go out and fight for his own rights, and then have the Conservation Commission or whatever you call it, who from time to time will adapt these things, which of course our courts will not enforce if they are unreasonable—we ought to have more of them; we ought to have a specific act prohibiting wasteful and excessive drilling, because it invades the other man's rights. Then, gentlemen, the question of price, as said by Judge Batts, would largely take care of itself, because the mere act of excessive drilling—not as affecting prices, for that would be the consequence, but to prevent injury to other people, will at once do away with or soon do away with this debauch and waste of the resources of the people of the State of Texas. Permit me to say this outside of the immediate purpose of this bill: Millions, yes, billions of oil and gas are being wasted or their recovery made extremely difficult or impossible by the present methods of drilling. Any excessive drilling is a waste, but the hoggish process of grabbing and taking is an injury to another's property, even though the drilling be scientific, because every man has an interest in that pool for a fair opportunity and a fair chance to get

what is his own, his very own, because it belongs to him and all the people under him. I submitted this bill to a very able lawyer, and after considerable correspondence when he returned it to me he had this to say: "This bill is so just and right and legal that I fear it never can be passed." Whom does it hurt? Nobody except one that want to hog the situation. No man has a right to go in there and grab the oil and gas from under your land because he has a million dollars and you have maybe fifty thousand dollars without giving you a reasonable opportunity to keep up to him. That is not question of waste; that is a question of injury to your values, and Judge Dunklin has so decided in the Fort Worth court where men were putting on vacuum pumps and sucking it away from under the other fellow's land, and the verdict of the jury was given for the amount they estimated had been so sucked away by using the process; and the same thing as to the excessive number of wells. The verdict of the jury was given as to his free hold by that process. The verdict was also given for punitive damage. I would like to see some larger verdict against these hoggish exploiters to teach them something. The lawyers of Texas and above all, the men who are not lawyers, oil men and gas men do not know their rights, lawyers who do not know the rights of their clients, if they would sit down and study the declarations of some recent cases and some not so recent, the rights of their clients in the State courts, if they would get into the Federal courts they would have machinery to do it, in my opinion. Judge Batts said he thought and I heartily concur with him, that it would be a valuable thing for the lawyer to enter into all these matters. What he meant, of course, was in giving remedies in these matters, for it would be unsatisfactory for you to attempt to take away one thing from one man and give it to another.

#### Questions by Senator Purl.

Q. I understand you are advocating the passage of a bill and not here as a witness, but I want permission to ask a question, if you don't mind?

A. I don't mind anything, Senator.

Q. Have you any objections to adding an amendment that the provisions of this act shall not apply to any litigation now pending in the courts of Texas?

A. None at all. I think that would probably be the law now. I think it would be a fair amendment.

Q. All right.

A. Because you don't want to take people by surprise; but, on the other hand, if you will pardon me, I think it should be most carefully framed, so as not to deprive any man of any right of property. I would rather it be left out; I don't see the occasion for it.

Q. You wouldn't want to help anybody win a law suit already pending?

A. No, sir. I have none pending, though I have a flock to bring about the matter.

Q. Are you appearing here as counsel for some companies, or just as a public-spirited citizen who has found these errors, or both?

A. I am appearing here—I can state my interest.

Q. All right.

A. I have some personal interest, and also I have clients, none of which are corporations.

Q. All right. Now, one or two other questions. From the tone of the questions asked in this hearing on the Woodward Bill this matter of economic waste has come into that discussion very much.

A. Yes, sir.

Q. I notice in line 36 of your measure, introduced, I understand at your request?

A. Yes, sir.

Q. Where you mention "expensive offsetting." Don't you think that is rather vague, to say "expensive offsetting?"

A. Well, I don't think so, Senator, for this reason: that bill attempts no definitions. Definitions are partly in our statutes, and Senator Woodward's Bill and others contemplate very useful definitions.

Q. Then you mention "decrease of values?"

A. Yes.

Q. And "scientific exploration." They are vague terms, to my mind.

A. Well, I considered that. There has been some criticism of that. Now,

if a man is wasting only his own, I don't think we ought to interfere with him. But if you will read on it says "injuring the plaintiff."

Q. Yes, sir.

A. And if it is injuring the plaintiff, I have purposely used broad terms and left definitions to the common law and statutes.

Q. Now, as for physical waste, a man now can sue for damages under the present law?

A. Yes, for damage, but that is an action—that bill is intended to prevent damage. If there were not too many defendants he could do that under the present law.

Q. We haven't got the opinion from the Federal Court, but it is understood they hold that economic waste can not be considered, and yet you have set up economic waste as a measure of damage; is that true?

A. I think not. I make this differentiation: I think the Federal Court was speaking of the attempt to boost prices or to interfere with the market and therefore in regard to prices to involve economic waste. That bill touches only upon physical waste and has nothing to do with price waste as production of too much oil. However, if you prevent physical waste and prevent one man with his power of money or equipment or what not by excessive drilling to do those things and then as a result, as Judge Batts pointed out this morning so vigorously, the waste would probably be restrained. As I understand it, the Woodward bill does not fall because of the doubtful constitutionality of it by attempting to fix prices, however disguised.

Q. Do I understand that the Woodward bill and the Woodul bill each one stands on its own legs, don't dovetail together at all?

A. You have reference to—

Q. The passage of one would not affect the other?

A. Not in the least.

Q. That is what I want to get clear.

A. It is such an important matter that I will repeat what I have said, briefly, because I desire to make it clear. If Senator Woodward's bill in the essential parts should pass—I have not studied it, but I think it is much needed, having a doubt as to price-fixing, however, that I hope it will be differentiated, that if it is declared unconstitutional, that would

remain, would dovetail into this. Suppose his bill was passed and was in force, and when someone brought an action under the so-called Woodul bill, then of course the court would take into consideration the findings of a commission with Senator Woodward's bill as a guide and entering into what it should do. In this bill that is carefully avoided, or any other bill of a remedial nature. I think that a commission should declare what is reasonable in the rules of the game.

Senator Purl: I thank you very much.

Questions by Senator Woodul.

Q. If a man injures you now you can get an injunction provided you can prove he is insolvent?

A. Yes, sir; you are limited to insolvency.

Q. That is hard to do, for a man is up today and down tomorrow in the oil business?

A. You bet.

Q. He may be a millionaire today and broke tomorrow?

A. Yes, sir.

Q. And then the second feature of the present law relates to an adjacent owner, and your idea is whether adjacent or not you should have a remedy, regardless?

A. Yes, sir. Can I answer a little further by illustration?

Q. Yes, sir.

A. I discussed this matter with Senator Small, who is away; he will be back Monday. He said out in the Panhandle, where they have gas fields, by exploitation and buying land and having equipment and lots of money they can take gas for miles, whereas as decided by Judge Dunklin in Fort Worth the other day he is entitled to take only a reasonable amount.

Q. Just one other thing. In view of the questions of the Senator from Dallas, I understand there are no lawsuits pending that you want to affect by this bill?

A. No, sir. I have some to bring, but if this bill should pass I don't think that would have any effect, because I drew those contracts and have contractual relief outside of the statute.

Q. The clients are all land owners of moderate size tracts?

A. Some are rather large tracts.

Q. But they are not in corporations?

A. No, sir.

Q. You are not connected, and have not been connected with any major oil company in your life, have you?

A. I have never represented, and have not been paid any fee in my life by any major company, but I don't think that should concern us here. I think this is in the interest of the majors and minors, the rich and the poor, because it is fair to everybody.

Senator Woodruff: I have a question.

The Chairman: Senator Woodruff.

Questions by Senator Woodruff.

Q. I am not familiar with your bill—let me put this hypothetical state of facts. We will say that approximately in the center of a two hundred or a four hundred acre tract of land I have a lease of ten acres square, and on the north side of my ten acre lease I put down a well and got production?

A. Yes, sir.

Q. All of the balance of the tract out of which my lease was taken is held by another individual or organization, whose relative financial power far exceeds my own?

A. Yes, sir.

Q. It has strained me to the breaking point to put down one well and get production there. This concern which surrounds me wants to buy me out and get me out, but I am not disposed to sell, and they go to work and drill a rim around me, all the way around my ten-acre tract, and do not drill on any other portion of their lease. Would your bill give me any avenue of relief from that sort of operation.

A. Yes, sir, it certainly does; because it would be excessive drilling, and also if they went to surrounding you with a string of wells, the chances of damaging you by mixing up of strata, getting into water, and various other kinds of accidents, would be enormously increased.

Q. Well,—

A. You have a right not only of access to your oil and gas, but you have a right to a reasonable portion of what is there.

Q. I understand.

A. And that being your right, you would have a right to retain them.



That bill provides against excessive drilling injurious to your values and your property.

Q. Let's suppose a few additional facts. Let's suppose that the wells surrounding my lease are properly spaced, and that the driller of those wells has adequate use to which to put his oil, the only disparity between us being they are in a financial condition to develop their property?

A. Yes, sir.

Q. And I am not financially situated so as to develop my property at the present time. Do you think under this law, notwithstanding the adverse party is developing reasonably, so far as his operations are concerned, the only difference being he is infringing upon me, because I am in an inferior financial position and unable to develop my property promptly, would I under the terms of your bill in any wise impede the progress of his development around me?

A. If his drilling around you was so conducted as not to take off the gas pressure unreasonably, and if he was not drilling so as to grab your fair proportion of the oil, and if he was drilling not wastefully, and not so excessively as to involve probable waste, your financial weakness would be your bad luck; but if he surrounded you with his excessive drilling, involving probably, as it almost always does, physical waste and injury to the strata, then it would give you relief, but not otherwise.

Q. But it would be possible under drilling practices so as to space those wells and pinch them to efficiently operate them as to the question of waste?

A. Yes, sir.

Q. That is, taking my area, and his area combined?

A. That is true.

Q. His operations would not be a waste, except it would be a depletion of my supply. Now, let us take this supposition a little bit further. Let's suppose that at this time it is commonly known or believed that there is a favorable crude market prevailing—the market is up through some stimuli, artificial or otherwise; it is believed commonly by all of us that it cannot be sustained at that height; would, under your bill, granted that this man has surrounded me and put a rim right around me, and is not drilling anywhere else

on his lease in order to produce—he says, he wants to get out in the center of his block, and wants to get his oil on the market now. Yet, I am not in position to get into the present market, and I am complaining of him under your bill, that he is draining my oil undoubtedly. Could I get relief?

A. I will answer this way. First, I think in the application of facts to a principle of law, every case has got to stand on its own bottom. Proceeding further, if his drilling involved waste, which I think you exclude, and if his drilling—you using reasonable diligence to exploit your property—was so excessive it would involve an undue proportion, as decided in the Fort Worth case, then I think you would have relief. What right has he to use his power to suck your minerals away from under your land by drilling an excessive number of wells, any more than he has to put a vacuum pump on it, which has been held illegal, and suck it away. Now, all those would involve issues of fact. Your mere financial inability to carry on evenly with him I don't think could give you relief, because he has a right to exploit his lease, and if he exploits it unwastefully and without undue or excessive drilling, that would be your bad luck, and I don't think the law would relieve you.

Q. Of course, I have put the state of facts as favorable to the big operator as I could in an effort to find out. I understand it is not an uncommon practice for the relatively financially strong operators to resort to that sort of methods of production where they want to get the holdings or leases of a relatively weak operator?

A. I think that is a sad fact, sir, and I think that bill would largely protect against it if a suit were brought alleging willful intent and undue and unnecessary exploitation injurious to your property rights. If it were not injurious, it would not help you at all.

Q. Do you think, then that the bill would afford a relief that the law does not afford?

A. I do; and I think, furthermore, Senator, that this bill should be passed in order to give the Court guidance as to the mechanism; but if you would repeal No. 664, and repeal the appointment of masters

in chancery, and enter an act that the State courts could appoint masters in chancery at their discretion, that would remove every impediment; but I think the mechanism and definitions proposed are extremely useful for the guidance of the courts.

Senator Neal: May I ask a question?

The Chairman: Senator Neal.

Questions by Senator Neal

Q. I wish to ask a question following up Senator Woodruff's question?

A. Yes, sir.

Q. In an oil or gas field, where a small land owner is surrounded by a company that has a large block, and he can't lease his land to these people, and he hasn't money to develop it, would he have under bill any resource against this large company that is draining his gas or oil while he has his hands tied?

A. I think so.

Q. We had a case like that in the gas field in my county.

A. I think he would have the relief without this bill, but I think this bill gives a guidance for his relief.

Senator DeBerry: Mr. Chairman, I would like to ask Mr. Dabney some questions.

The Chair: Very well, proceed, Senator DeBerry.

Questions by Senator DeBerry

Q. Using the same hypothetical case as used by the Senator from Wise with respect to relief under your bill in the condition there with respect to another man draining his oil. I want to ask you a question with respect to an allegation of that man, that he set up there that he was not financially able to explore with respect to waste. Now, if I understand the discussion here, here is the question which arises largely through diminished gas pressure, largely through a proposition of drawing salt water?

A. Yes, sir.

Q. Now, if the man who occupied this small lease on account of his financial ability was not able to explore, and would set up an allegation of waste, unless he had some holes bored there, or some wells that he could use as evidence that his pressure was being lowered or that salt water was brought in on him—

A. In analagous cases, I have been through litigation, the law I take it is this: if you have a territory that in the oil field and gas field parlance they call proven territory, then you have a prima facie case to submit to the court that you have got something there without boring at all. If your neighbor, or people operating on the same stratum are injuring you that much you have a prima facie proof that there is something there by showing it is proven territory, although you haven't drilled there. Then you would have a case. Your mere financial inability to do anything I don't think would give you a case, but if you are financially unable and they were proceeding excessively and wastefully I think you would have a case.

Q. I don't think you quite understood my question because I rather gathered from your answers to his questions, where this injured party alleges that oil is being unfairly taken away from him, and it being, as you say proven territory, I think that would be largely prima facie, but if I want to allege that he was diminishing my gas pressure and that he was bringing salt water in on me, if I don't have wells there would that be prima facie, wouldn't I have to have something to prove it by?

A. As in the Civil Courts we go upon the preponderance of the evidence only I think you would make a prima facie case after showing that in his wells or in other wells in the immediate vicinity by wasteful methods of drilling and injuring the gas pressure they were injuring the whole stratum. The mere fact you were unable financially to help yourself would not enable you to hold others from operating wastefully.

Q. Take for instance in the East Texas fields, they claim the water is encroaching from only one direction?

A. Naturally if it is one stratum and has a slope.

Q. In other words, it don't encroach from both directions like it does in what I call a dome field. Do you think a case could be made if his wells did not show salt water yet if he had wells on the water side of my holdings, it is rather obvious that it would be showing salt water, or the sand being somewhat thinner,

or something like that, if the sand was wide enough for me to get the gas from his holdings, if I understand your bill it provides—

A. It covers the whole stratum.

Q. What would be his chance to have a case if he didn't have a well?

A. Well, as I have stated in the trial of civil cases, there is a wide scope and it is on the preponderance of the evidence. If there was salt water encroaching towards him through a half a mile, if not reaching him or his immediate neighborhood. I am extremely doubtful if that would be sufficient impending injury as would give him a case, but that would be for the courts to determine, it would be for the court to say.

Q. This question is in a different line from any question that has been asked you, and as you are discussing this bill you are more interested than any other, at the same time in the consideration of your bill and the whole subject, other bills that may be drawn, I don't care to take much of your time with respect to these other bills, but as you have said one of your prime purposes being to protect the right of the individual—

A. Yes, sir, or anybody, that is a right, corporation or individual, rich or poor.

Q. That is the individual holdings?

A. Yes, sir, royalty holders or anybody.

Q. The reason I am making this explanation I think it will clarify the question I want to ask. I think I understood you to make the statement that our conservation laws in a way have leaned too much toward the protection of the masses as against the individual rights of the holder of holdings?

A. No, sir, I think there is a misapprehension. In the first place I wish to say that I am very much interested in Senator Woodward's bill or any other conservation act, they are very much needed. That bill is not drawn—I am trying to answer your question.

Q. I don't have reference to his bill, I said some of the laws on the Statute Book. I understood you to say they rather had a tendency to try to protect the mass, I did not get what you thought was the proper remedy to the individual holder or the individual person or

holder, or a holding company?

A. I concur with you except in one word. There are procedural acts and not acts giving rights. You say to protect the man I think that these limitations in our procedure don't give men with immense amounts of money and equipment and organization the ability to get something which is not theirs, so I object, and I criticise a little the word protect, because I think undeniably they have been given advantages by a wrong procedure, so as to deprive them not of their right, but of the ability to assert their right in the Texas courts.

Q. In other words, I understand you criticise the procedure accomplished under the statute whether that is the statute itself?

A. Yes, sir.

Q. Now that brings me to where I want to ask you this question. Isn't it a fact that in the decision just rendered by the Federal court that they say in substance, I am not a lawyer, I don't know how to say these sayings only to just shoot at them in my own language and vernacular, that they have ruled in this decision in substance that the railroad commission in its order has exceeded its statutory authority?

A. From the newspaper I so understand. I concur with you, but it is only the newspaper.

Q. I am not saying that is a fact, but if that is a fact, I will lead you directly to the question I want to ask?

A. I think it is.

Q. Well, we will say for the purpose of my question that it is a fact?

A. All right.

Q. Now, under a bill, a conservation bill which we are now considering that says any order of this body is prima facie that the order is valid and therefore equitable until proven otherwise, the injured party, that is as near as I can come to stating one of the provisions of that bill, that if the railroad commission issues an order which might, as you know, exceed statutory or constitutional rights, and as they are not all wise, this bill says that is prima facie and has to be observed until adjudicated, wouldn't that naturally and very likely operate to the disadvantage of this same individual holder, what I mean as we construe

it, wouldn't that very likely inure to his damage?

A. If it was an unwise order it might. Of course, any commission's order must be subject to court review, though it may be given prima facie force, then of course it might hurt an individual, it might hurt a great big exploiter, I could not tell where it would hit.

Q. Would you recommend such a provision in a bill?

A. My view is, Senator, that some—I concur with you—possibly not the Railroad Commission, because it has too much to do, but some commission should be given the power to make at least general rules for conservation to prevent waste, and permit reasonable drilling and exploitation, which would be prima facie, and I think it is a wise thing.

Q. Suppose they do not stand up, where is the remedy?

A. If they do not stand up why then the remedy is in the courts, as it is in the case,—I represented the railroads a long time as General Attorney, and I know what I am talking about,—as in the case of rate making orders by the Interstate Commerce Commission, you have to go to court and have them set aside; if they are drawn into litigation you have to show that they are unfair and unreasonable and confiscatory.

Q. You don't get anything back for the time you are injured?

A. No, sir, that is what I object to, because under this bill instead of waiting on a commission if it has not acted you go ahead to the court and assert your rights individually, and if the commission has acted just and reasonable you still go ahead, and the courts will enforce the actions of the commission, and no court, Federal court or anybody else can enjoin you.

Q. I understood that with respect to your bill, but as you had sponsored this legislation for the purpose, as I understand it, as I have already stated, for the protection of the individual I wanted to get your reaction as to whether or not that provision in a bill might cause injury without—of course he has got his remedy in court as outlined there but he has got no right for damages, is that fair to the individual?

A. Well, if the order complained

of was approved by the court it would apply to everybody, corporation and individual. If the bill does not interfere with the suit for damages he can sue for damages. Under the law that bill did not touch that.

Q. You do not think that provision in a conservation bill, taken for granted the commission does issue an order that is not justified by statute or constitution, you think the individual has his remedy?

A. Absolutely, just like the railroad has against the railroad commission now.

Q. I want to ask you one more question, now after the right of the individual, what do you think about this bill carrying a provision, do you think he can be injured, that is the individual or the individual holder, can he be injured to the extent that you think it would be unfair when you put into that bill certain binding provisions which he might or might not be able to meet and put the venue in Travis County Courts?

A. Now as to the bonding provisions, it is covered by the bill by simply saying that the court unless otherwise herein provided shall proceed under the equity practice, which involves the bonds and everything, I would not put that in the bill because you might get mixed up with the machinery that was there before, which was a wise machinery and different from the present.

Q. The second question was with respect to venue. I live in Red River County. I am a small man there and I allege some man is unnecessarily drawing my oil and that he is wastefully injuring my property and I want an injunction, I want to hold him down. Do you think that venue ought to be in Travis County?

A. Absolutely not.

Q. Sir?

A. Absolutely not. I would leave the venue where the law put it now. I may say in that connection this changing venue, I am not talking of Texas, but the dragging of people over the country is a very expensive and often a very unjust thing.

Q. You know, we often say, when others agree with us we think they are smart. Therefore, I think you are smart.

A. Thank you sir.

Senator Woodul: I am rather afraid the Judge I am satisfied Senator DeBerry's questions about the bond provision have relation to the Woodward Bill and not to the one that the Judge is discussing.

Questions by Senator Woodul.

Q. Now then, there is this difference about the prima facie rule that the orders of the Commissions, the Insurance Commission, Railroad Commission, all Governmental Commissions, there is generally in every statute a provision that their orders are prima facie the law until rebutted which merely changes the burden of the proof. Is that correct?

A. Yes, sir.

Q. That is true with the Railroad Commission's orders?

A. As far as I know.

Q. Of the Insurance Commission's orders?

A. Yes, sir.

Q. Or any other Commission's orders?

A. Yes, sir.

Q. Now, in the Woodward Bill, there is merely the usual and customary provision in all similar statutes that the orders of the commissions shall be held to be prima facie valid until proven otherwise?

A. Yes, sir.

Q. Now, isn't that in the best interest of the public because the commission is representing the whole public?

Senator Woodward: That is just copying what is already in the statute.

Senator Woodul: Yes, sir, that is in all statutes.

Q. There is nothing uncanny about that rule, is there?

A. It has been so long established I wouldn't apply the word uncanny to it and in this bill of course the courts would apply that rule where the Commission has ruled.

Q. Now, then, in your bill, you are merely affecting rights between individuals and not between the State as represented by the conservation company and individuals?

A. Yes, sir, that is right, except indirectly, but the rules of the Conservation Commission—

Q. (Interrupting) Will become incidental?

A. Yes, sir, and govern the courts until set aside, where shown to be unreasonable.

Q. Now then, it is usual in this State, and of course, there is considerable difference of opinion as to whether in matters affecting the State or its officers, or commissions, that venue should be had in Austin where the commission's records are and where they will not have to be running all over the State to lawsuits, and the Attorney General's department may not. That is a debatable question, as I understand it, and the boys from West Texas do not want their titles litigated in Austin, but your bill has nothing to do in that relation, the titles would be litigated where the property is situated?

A. Yes, sir, we have a statute which provides where the title to land, leases thereof, or actions to remove cloud from title shall be tried, in the county where the land is situated, unless of course the State is involved. The Commission normally, of course, would not be in any respect a party to the proceedings.

Q. A commission would not be a party to any proceedings you would bring under your bill, if it became a law?

A. No, sir.

Q. But under the Woodward Bill where you go to attack a ruling of the Commission, the Commission would be a party?

A. I haven't studied the Woodward Bill.

Q. That is the general—

A. Then I suppose they would desire to try it here, but that is not contemplated under this bill.

Q. Under this bill the Commission would not be a party, would it?

A. No, sir.

Questions by Senator DeBerry.

Q. I want to ask you one more question. I had no intention to confuse the Woodward Bill with your bill?

A. I understand.

Q. But after he has asked you the questions that he has asked you, I want to ask one question: Now, I am talking about the Woodward Bill, not your bill, or anything that has to do with it. Under that bill if the commission issues an order, and I am going to take it for granted that it is not justified by equity, statute, or the Constitution, either one of the three, or possibly all

three. I am a small lease holder in Red River County, or a small producer. That is up close to Texarkana. Do you think the venue of that case wherein I allege that that commission has exceeded its authority, do you think I should be brought to Austin to try that case, that I would have to come to Austin to try that case?

A. If it is so provided in the Woodward Bill and you are suing the Commission, I presume you would have to come to Austin. Are you asking my opinion about the justice of such a thing?

Q. That is it exactly?

A. As I said before, this thing of dragging people long distances away from their homes, they may be people of small means, it always seems to me a very excessive exercise of power, but that it not concerned in this bill.

Q. And isn't it a fact that in these instances like oil legislation, that all differences arise between individuals or corporations as between them and a State board, that it is different from freight rate hearings in that there are more individuals and more individuals who are not able to come down here to try cases, isn't there some difference there?

A. I think so, because in a Railroad Commission hearing, speaking of matters in which I have been concerned, that is usually a question of a controversy between a large corporation and a State power, exercised by the Commission where the parties can afford to travel.

Senator DeBerry: All right, thank you, sir.

(Witness excused.)

Senator Gainer: I desire to present the Hon. Scott Haywood, of Jennings, Louisiana, who is an appointee on the Oil States Advisory Committee of the governor of the State of Louisiana.

The Chairman: This, gentlemen, is Honorable Scott Haywood of Jennings, Louisiana, a member of the Oil States Advisory Committee, appointed to that committee by the Governor of Louisiana.

(Thereupon, the witness was sworn by the Chairman.)

Mr. Scott Haywood: Mr. Chairman, and Gentlemen: I understand that Mr. Holmes testified here yesterday that the average per cent of profit

of the large companies was about 2½%. And I noticed today over in the House that Mr. Farish had a few assistants carrying his brief cases and so forth. I want to call your attention to the fact that I am carrying my own brief case, and I think that represents the difference between 2% profit and 90½ loss for the independent producers.

It is my understanding that this investigation is for the purpose of getting information before this legislative body regarding the oil and gas industry so as to enable it to better judge the legislation needed to conserve these natural resources.

If I can aid this committee in its task and through my assistance help to secure proper legislation which will bring about prosperity to every branch of the oil industry I will feel that I have rendered a service not only to this committee but to every producer of crude oil, every farmer with royalty oil, thousands of unemployed oil field workers with families going hungry at this time, and to the State itself, and all citizens of the State, for when the oil business is prosperous or in a chaotic condition it affects every line of the business in the State.

To give you information needed, it will be useless to run only one reel of the picture and let the others be held back; in other words, I must go back into the oil history a few years in order to unfold to you the things which have led up to the present condition of the oil industry, and then point out the future if something is not done and done very quickly. I want to state that what I am testifying today is not as a member of our Oil States Advisory Committee,—I am a member of that committee representing Governor Long of the State of Louisiana, and that committee is composed of ten men appointed by the respective governors representing ten different oil producing states, and if there is any question the committee would like to ask me when I am through regarding Oil States Advisory Committee, I would be glad to answer it. What I say today I want it distinctly understood as being a man who owns oil interests in the State, who has produced oil in the State as far back as 1901, having drilled the second well in the Spindle Top, Beaumont, field, and one of the pioneers in the

Borger, Texas, field in the Panhandle.

Prior to the year of 1926 the policy of large refineries and purchasing companies was to let the individual operator or producer, commonly called the independent, do the "wildcatting." The reason for this policy was that geology had not progressed sufficiently to eliminate the great risk involved in "wildcatting" for new fields.

It was the policy of the big companies when a shortage occurred to encourage new "wildcatting."

When a new field was discovered, the purchasing companies would install gathering lines and tank farms, purchasing the crude oil, and storing it, and in order to get the field developed to the extent desired, they would raise the price of crude in the particular field from time to time until the new field had reached what is termed a "major pool."

When all this had been accomplished it has been their policy to then claim overproduction, or too much sulphur content in the oil or lack of marketing facilities, and as one or all of these were given as excuses the price of crude was cut.

After the price of crude had been cut to suit their fancy they then would install their trunk pipeline or lines and buy the flush production of this field by continuing the price at a point that the difference between the value of the oil and the price paid for it would pay for the gathering lines, the tank farm and trunk pipelines.

Before the year of 1926 there had been, at times, great shortages in crude, and these major companies were forced to import from foreign countries enough crude to fill the demand, so they adopted a plan, dating back as far as the year 1923, of endeavoring, if possible, to hold in storage at the end of each year enough crude to represent fifty per cent of the previous year's demand—or six months' supply. This was for the purpose of insurance against what might be a coming lean year in production, and emergency, such as war, etc.

The Bureau of Mines' reports show as follows:

At the end of the year 1923 there was a storage in the United States an amount of crude equivalent to 49.9% of 1923's consumption.

At the close of the year 1924 there

was in storage the equivalent of 52.4% of the consumption of crude for that year.

At the close of the year 1925 there was in storage crude equivalent to 52.9% of the consumption for that year.

At the close of 1926 there was in storage crude equivalent to 43.4% of the consumption of that year, and it was necessary in 1926 to draw from storage 24,764,000 barrels besides imports in order to meet the demand.

At the close of 1927 there was in storage the equivalent of 49.1% of that year's demand, and they were forced to import 71,726,000 barrels to make up the shortage for that year and replace the 24,764,000 barrels which was withdrawn from storage during the lean year of 1926, and even then lacked 9/10th of 1% of having the usual 50%.

In 1926, however, geology had reached a point where the risk of "wildcatting" had been reduced to a minimum, and the newly-discovered German geophysical methods of finding new fields had been introduced and adopted by the big companies, and, last but not least, the Mellon-Gulf Company, the Dutch Shell British owned corporation, Standard Oil Companies of New Jersey and New York, through their subsidiaries, had developed enormous productive fields in Venezuela and Columbia. So, the oil business had reached a point where the independent operators and "wildcatters" were not as useful as they had been in the past, and these large companies evidently reached the conclusion that they would produce their own oil or purchase it at all times for a price that they could import cheap produced foreign crude and thereby save storage expense, and at the same time sell gasoline at approximately the same price as before. As, for instance, in the early part of 1926, they paid as high as \$2.50 per barrel for 36. gravity crude, and gasoline was selling at 18 cents.

In 1926 the great Panhandle-Borger field was brought in, and following its excitement the famous Seminole field was brought in, so in my opinion the new plan was conceived in 1926 to import enough foreign crude to bear down the price of production in the United States so as to allow foreign-produced crude to come in tariff-free, saving gross

production and ad valorem tax by reason of its being produced in foreign countries and being in transit, and curtail domestic production to a point that would allow them to refine and unload stored crude which was not needed as a reserve.

To carry out this plan, two leaders of the industry, officials of the Standard Oil Companies, who were and are today large importers of foreign oil, went to Washington, D. C. and endeavored to, and succeeded in, convincing Secretary of the Interior, Work, that we had in the United States an enormous "over-production" of crude oil going to waste, and that curtailing and prorating of production in flush fields should be allowed by voluntary agreement, for conservation purposes and evidently sold the Federal Officials on this plan.

Secretary Work, I think it was in August, 1926, made the statement that was put out in the Associated Press that there was a million barrels of oil being produced in the United States and practically all of it going to waste, when really at that time we were seven million barrels short as I remember it for the month of August, 1926.

One of the greatest stumbling blocks—pardon me right there, Mr. Stenographer, I want to make a statement which is not in the brief—a friend of mine, Mr. Holmes, who was a producer in the Borger Field, he and I composed a letter and sent that letter to Secretary Work and called his attention to the fact that he had made a gross mistake in his figure. We called his attention to the fact that if he would go across the street to the Bureau of Mines Office he would find we were seven million barrels short for that year. Mr. Work did not see fit to answer the letter, so we sent him another and his secretary answered and said what he meant was economic use was going to waste. One of the greatest stumbling blocks in carrying out this voluntary agreement plan was our anti-trust laws. But, in some way, the conservation laws of the State of Oklahoma was interpreted so as to allow proration to be put on Seminole field.

As stated above, the whole curtailing and pro-rating plan was supposed to be for the purpose of conservation, and to prevent overproduction, but as soon as the curtailing

and prorating order was put upon the Seminole field, these large companies installed their own wells, with air and gas-lift, which artificial means of producing unquestionably raised the production in the Seminole field from 25 per cent to 30 per cent more than it would have been had the wells been allowed to produce naturally or on the beam, and they claimed overproduction again.

Texas and California being large producing states, were asked to curtail and prorate, and with the threat of a cut in the price of crude and with the aid of the Railroad Commission through hearings, curtailing and proration orders were made in the Winkler and Pecos fields and producers were told that curtailing and prorating would stabilize the price of crude.

The only stabilization in the price of crude that I have been able to see from curtailing and prorating has been through the threat of potential over-production which, by the way, is a bug-a-boo, and with foreign oil taking the place of curtailed production, these purchasing companies have been able to keep the price of crude at practically confiscatory levels, this evidently is their idea of stabilization.

At this point and before going any further let me go back to the history of the Borger field.

This field was practically owned by the independents when oil was discovered and when the field started to boom in 1926 some of the large companies installed gathering pipelines and tank farm storage and started buying the oil, paying a price of \$1.50 a barrel. As the field got well on its way toward a boom these large companies started buying acreage and also started a drilling campaign spending millions of dollars for storage tanks, gathering lines, purchases of leases, bonuses and drilling wells, but they continued raising the price of crude in this field encouraging every lease owner that could finance a well to do so, and by August, 1926 the production in the Borger field had reached 160,000 barrels per day and the price had reached as high as \$1.90 per barrel.

Part of the oil had been run to tank farm storage and part of it shipped out by tank cars. When this high peak in production had been reached then came the Zero



hour. At midnight on August 15, 1926, with no warning of what was to happen, the producers were told that they would not buy any more oil and were given the reason that the oil contained so much sulphur content that it was eating out the refinery stills, tanks, etc., etc., and further that their storage was full and no facilities for marketing the oil.

This meant a complete shut down except for those producers who had made previous contracts. Steel storage was very expensive for small operators and even if they could finance storage it was impossible to get steel storage deliveries in time to prevent enormous damage to the wells.

This shut down forced the producers with supply bills and labor to pay, with off-set wells to be drilled in order to perpetuate their leases, to rush out and try to find buyers at whatever price they could get.

Brokers from Oklahoma and other parts of the country swarmed to Amarillo very soon after the shut down to buy distressed crude.

I conceived the idea of damming a large canyon on my lease and build earthen storage by gun-iting with cement the bottom and sides and with a roof of lumber, tar paper and earth, and upon investigation I found that I could build a tank of 500,000 barrel capacity or smaller at 15 cents per barrel as against 45 cents per barrel for steel storage, and the earthen tank could be built in a very short time.

I asked for and secured a hearing before the Honorable Railroad Commission and they granted me a permit, as will probably be shown by the records.

I also helped another producer to get a permit to build a tank with a capacity of 1,000,000 barrels. I told the Railroad Commission members that if they would grant this permit that I was certain I would never be forced to build it.

I gave this news to the Amarillo papers and asked them to print it on the front page in box car letters, which they did, and the result was that these companies in a few days started buying the oil again but took advantage of the producers being forced to cut the price, by posting a price of \$1.25 followed by another cut to 75 cents per barrel.

Now, gentlemen of the committee,

for your information, I wish to state that this propaganda put out by these purchasing companies was, in my opinion, nothing but conspiracy for it was found that the oil only contained 47/100 of 1% sulphur content, and that the oil ran from 35 to 41 gravity and with an ordinary topping plant or skimming plant yields around 30 to 40% gasoline and contains valuable lubricants and is worth practically the same as the sweet oils found in the Oklahoma fields, and at that time there was no overproduction. I ask you gentlemen, was this conspiracy and manipulation and I will answer it by reading you a statement published in the Oil and Gas Journal of March 6, 1930, which was put out by Mr. Fitzpatrick, who is chairman of the board of directors of the Prairie Oil & Gas Co.

It seems that Mr. Fitzpatrick did not approve of the cut in price of crude which was made by the Humble Oil and Refining Company on Jan. 15, 1930.

The Prairie Oil & Gas Co., so I understand, held about 60,000 barrels of crude in storage which had cost them better than \$2.00 per barrel and as the Prairie Oil & Gas Co., is a producing and pipe line company and does not refine crude oil but sells it, and as Mr. Fitzpatrick is supposed to hold a good block of the stock of this company you can readily see that the Prairie Oil & Gas Co., were forced to write off on their books several millions of dollars in losses, which evidently did not please Mr. Fitzpatrick.

In speaking of those being hurt by the cut in the price of crude, in Mr. Fitzpatrick's article he said, in part, as follows:

"It is important that these people seriously take stock of the situation, understand conditions as they naturally exist, know where the responsibility lies for the present unsatisfactory conditions, and adopt means and measures for their own protection when such conditions and responsibilities are known and understood.

"They know where the statistical and economic information came from that made the oil of the Panhandle seem to be so grossly inferior to the Mid-continent crude oil and that the price of the Panhandle oil had to be reduced.

"They recall that according to statistical and economic information passed out at that time that all tankage and pipe lines employed in the storage and handling of Panhandle crude oil should have been eaten up and ruined before now, and that refinery equipment operated on that grade of crude oil would have to be renewed every twelve months. They also know how soon it was after the reduction in the price of Panhandle crude oil that the technicians and experts discovered that all the information put out a few months before for the purpose of justifying a price reduction in the Panhandle, was wrong because it was then stated that the crude oil from Panhandle, Texas, was of much better quality than at first it was thought to be, and the difficulties in handling it did not exist."

Reading further, "We were then assured that the value of Panhandle, Texas, crude oil was so nearly the equivalent of Mid-Continent crude oil from Oklahoma and Kansas that the price of those crude oils had to be reduced on account of the supply and the price of the Panhandle crude oil."

Mr. Fitzpatrick adds, "and they know many other things along the same line nor can they forget that in the early days of development in Kansas and Oklahoma that crude oil was represented to contain products of little value."

Mr. Fitzpatrick also said, "Everyone at all familiar with the oil industry as it has been developed and it now carried on between the Mississippi River and the Continental Divide knows who forced drilling and air lift equipment, which resulted in the enormous over-production in the Seminole pool in 1926 to 1927."

"They know who and what units have cooperated in restraining production."

I want to state here that those who installed air and gas lift in the Seminole Field were the large companies.

Senator Purl: Can you name these people? Can you give us more definite information?

A. I cannot name those people, because I am not acquainted up in that field. I do not know all those operators.

Gentlemen of the Committee, I wrote articles which were published in the Amarillo papers and which were sent to the Railroad Commission in pamphlet form, in 1926, exposing this manipulation and here is a major company official, whose company produces, but does not refine and who, by the cut in the price of crude oil was being pinched, who gave this article out for publication, which, in my opinion, borders on and near to a threat of further exposure and which confirms the statement that I made regarding the matter in 1926; and I wish to add that since this article of Mr. Fitzpatrick was published, the price of oil has continuously gone down, but we have heard no more exposures from Mr. Fitzpatrick.

Now, going back into history.

When the Pecos field came in, the producers in that field were told that this particular oil had so much sulphur content that it, too, was of little value, and the price of 60 cents a barrel was posted on that crude.

I was told by a refinery manager in New Orleans that was buying this crude that they were experiencing no trouble with the sulphur and that they could ship this oil to New Orleans and make more money on it than to buy North Louisiana crude oil, and gentlemen, if you will look over the records of the Railroad Commission of Texas, I think you will find that the Railroad Commission's orders on proration have been based on nominations made by the purchasing companies, and I think you will find that the nominations have been made for a greater amount of oil from fields that the purchasing companies have the greatest production in, and I think you will find that the nominations from Winkler and Pecos Counties have been greater than other individual fields at the time the production from the Winkler and Pecos fields were at their peak, so they evidently had no fear of sulphur. And I think that you will find that the major companies own a greater interest in these sulphur content fields and that you will find the gasoline coming from the oil has very fine anti-knock qualities, which is a saving to the companies, for the fact that it eliminates the necessity of adding to the

gasoline ethyl lead which has been and is being put into gasoline to prevent the knocking of motors. It seems to me that the above history should absolutely blow up the sulphur content propaganda.

Now, let us look into curtailing and proration.

When Mr. W. S. Farish of the Humble Oil & Refining Co., and Walter Teagle of the Standard of New Jersey, fathered this proration plan, the producers were given to understand that should they not prorate that they would get a cut in the price of crude, but remember the price has been cut before proration started.

The producers were also led to believe that if proration was put on and supply and demand would balance, that it would stabilize the price of crude oil, but what happened?

As proration held down the production in the flush fields, mind you, in accordance with the nominations made by these purchasing companies, imports increased so as to fill the gap made by proration and through these importations caused an over supply, which was called "United States over-production," and then it was stated that Texas oil and other oils would have to come in competition with this cheap low grade foreign imported oil, so another cut was made in price, and more stringent proration was imposed upon the producer, as these leaders stated, to "balance supply and demand."

This plan has continued until in some fields some producers could not produce enough volume at the posted price to pay expenses, and rather than go into bankruptcy, they offered to sell under the posted price or so it is claimed, some bootleg oil. The way I look at this bootleg oil is that it was either sell bootleg oil or enough of it to pay expenses, or go broke, but who brought this condition about?

Soon after this unfair proration, which made room for increased imports, and unfair cut in price had brought about the bootleg oil condition, the purchasing companies then took advantage of this excuse and cut the price still further; yet, I am told by a producer friend of mine in a certain field that he has been receiving 27 cents a barrel

premium above the posted price from a branch of the Standard Oil Company for his production, while farmer royalty gets the posted price. Is this discrimination?

So, since 1926, it has been an endless chain, of proration, importing and cut after cut in price, instead of rewarding the producers by giving them a fair price.

These leaders' stock in trade cry has been over-production, sulphur content, cheap foreign oil to compete with, potential over-production, bootleg oil, until after the records for 1930 showed there had not been an over-production for that year, even with imports, and also showed that there had been withdrawn from the much talked of "too large stocks on hand," I say, the records of 1930 after all this, showed a shortage in the production of about 50,000,000 barrels.

I ask you gentlemen, when the production of the United States and imports to the United States fell short 50,000,000 barrels of meeting demand, should there not have been restored to the producers a price structure that would represent a profit to them?

But let us see what happened. The price was cut again with the excuse that while demand was greater than supply, yet they feared proration would break down if they raised the price, and that the laws of Texas did not have enough teeth in them to force producers to curtail, so they cut the price again.

Gentlemen of the committee, when will these \$50,000 or more a year salaried officials run out of excuses?

Now, let us take up the East Texas situation. I think you are familiar with the time that the independent "wild-catters" brought this field in and are familiar with the fact that the big companies found themselves on the outside looking in, but it did not take them long to lay their plans and their pipe lines. They stepped in and paid some fairly good prices for a foothold in acreage in this field and then started drilling in the field, thereby helping to build up a large potential.

They posted an exceedingly low price for this valuable oil, taking into consideration that the production of the United States was falling

below demand, including imports. Then they went into this territory and held a meeting to bring about proration.

The producers in this field had become wise to the methods used regarding proration following with cuts in the price of crude, and after the hearing of the Railroad Commission these East Texas producers felt that the nomination for East Texas oil was too small, and placed that field at too low a level, and with offset wells to drill, and leases to protect, that under the price quoted it would not pay them to prorate, so they refused to prorate.

The next move was to withdraw posted price.

They refused pipe line connection to a great many wells, thereby creating a condition of chaos, which left the law of the jungle to prevail, and immediately after this, in came the broker to buy distressed oil.

And right here I would suggest that an investigation might find that this oil sold to brokers at ten cents and less per barrel has found its way to some of these proration advocates.

So the game has been played in East Texas until I am informed that the Humble Oil & Refining Company owns twenty thousand acres of the field, and this does not represent the cheap oil purchased by this company, nor does it cover the other large companies that have taken advantage of the chaotic conditions, and through this condition in East Texas the whole mid-continent has been thrown into chaos. And on account of the price of oil in the East Texas field, based on ten cents per barrel, you can readily see that purchase of lands in that field can be bought at the rate of about ten cents on the dollar while these conditions last, and if this condition lasts, how long will it be before the major companies own the fields?

They say now we must have laws with teeth in them, but my interpretation of this is that they mean laws with false teeth in them.

There is no question that we have foolish, selfish, and obstreperous producers and there is no question but that production should be prorated on all flush fields ratably to such an extent as to allow all old wells to produce and at a price that

settled production and marginal represents a fair profit, for these settled production wells represent the backbone of the industry, and should not be forced by price structure to be abandoned.

If these wells cannot be saved it will be the greatest waste that your State will experience, for once these wells are abandoned and the casing pulled it will never pay to drill new wells into the depleted sands, for there will be no flush production to pay for the investment. It might be well for this Committee to investigate as to the great loss to the State of Texas in producing such an enormous volume of oil in the last few years, which never can be replaced, and which is being severed from the ground and sold on what I consider nothing but manipulation prices which bring no profit to the producer, and prices which have reduced the gross production tax belonging to the State and that have robbed the State on its royalty and the farmers on their royalty oil and which has not been consumed in the State of Texas.

I have in my possession a report from the Comptroller showing what has been going on in this State since 1926.

In 1926 the total production of oil in the State of Texas was 189,850,-878.68 barrels of oil. The gross production tax was \$5,524,355.83. In 1927 the gross production of oil was 208,717,953.06 barrels, showing a 48.2 per cent increase in production. The income from the gross production tax \$5,797,237.81, showing an increase of 5 per cent on the gross production tax, and an increase of production of 48.2 per cent. In 1928 the production was 240,-616,380.43 barrels, and the gross production tax was \$4,686,389.35, showing an increase of 15 per cent over the 1927 figures, and a decrease of 5 per cent in the tax. In 1929 the gross production was 286,-706,449 barrels; and the income was \$6,101,523.00; that showed an increase for 1929 of 19.4 per cent, and increase over the other of 30 per cent. In 1930 the gross production was 290,610,039 barrels, and the gross income tax was \$6,529,345.00. The increase for 1930 over 1926 was 107.8 per cent on the production, and the increase for 1926 on the gross production tax was 18 per cent.

Senator Rawlings: Was that increase on income?

A. There was an increase of income in 1930 over 1926 on gross production tax of 18.2 per cent, and there was an increase in 1930 over 1926 on production of 107.8 per cent. I was unable to get the total amount of oil that the State received for its royalty, as they stated it would take about a week and an extra man to get it up and I did not care to spend the money, but I did find this which I will give you, it will give you an idea of the price cut. I got this off of one book which the gentleman at the land office gave me. September, 1930, royalty to the State on one statement showed that the price was \$1.36; October, 1930, the price was \$1.28, that is the royalty for the State; November, 1930, the price was \$.95, December, the price was \$.95; January, 1931, the price was \$.88; February, 1931, showed \$.81; March was \$.62; April was \$.57; May was \$.51; June, \$.32, and he hasn't got July in but we all know what it is, I think we do.

I understand that your Governor will not support a bill that regulates production to meet demand giving as his reason that it would be price fixing. I don't know whether that is true or not, but I read it in the paper down in Louisiana. That does not show that production going below the demand is fixing any price on owned oil.

It is my understanding that Attorney General Mitchell when asked by the Federal Conservation Board for a opinion on forced proration and President Hoover also made the statement, that production could not forcibly be prorated legally without fixing a price for that which the producer was allowed to produce. So I say, gentlemen, please bear that in mind, when considering legislation. The way I see this proposition is this, price enters into conservation as much as physical waste, for when Texas oil is severed from the ground and the State on its royalty, and the land owners on their royalty, do not receive a price in line with the intrinsic value of this crude oil, it is a waste to have it produced, and when the producers do not get a price that represents a profit for producing, it is also a waste, for oil is a one time crop, and is a natural re-

source that never can be replaced, and the commonwealth of your State will suffer for this outrage. When oil is produced and purchased at confiscatory prices, and refined and resold to consumers for prices out of line with the price paid for the raw material, it is not only a waste but profiteering on the consumers of your State. When crude oil is severed from the earth in your State at confiscatory prices and at prices that do not represent the value of said crude and millions of barrels shipped out of the State in the shape of gasoline and lubricants and sold at a large profit, the State of Texas is the loser, and it is a waste.

When oil is severed from the ground of the State of Texas and refined and exported to foreign countries at from 25 cts. to 65 cts. per gallon, it is robbing the State of Texas of its natural resources and the ones who are gaining, are to a great extent corporations controlled by non-resident stockholders.

These profits go out of the State and in all probability a large part of it lands at 26 Broadway. I ask you, is this conservation?

I want to tell you the law of supply and demand in the oil business is nothing but a myth and the only way you will ever get true conservation and justice, in my opinion, is to pass a law that will declare oil and its derivatives of public interest, and that the State has a sovereign right in all oil produced, that the police power of the Legislature of this State for conservation purposes has the right to regulate production to balance demand, and the right to fix a minimum price based on the value of the crude oil produced, and to determine this the State should establish a laboratory which could be done at no great expense, to test the oils for sulphur, gasoline and lubricant content.

Anyone would think from all the talk we hear about oil that all it contains is sulphur and gasoline, but if you gentlemen will investigate, you will find that after the gasoline is removed from crude there is still kerosene, distillate and very valuable lubricants, said lubricants selling around 30 to 35 cents per quart, and when you take this into consideration and then consider the price paid for crude, it would seem that the time has come for this State to

take charge of the oil business and regulate it from producing to the sale of its by-products to the consuming public.

It sometimes is found in criminal cases impossible to get enough positive evidence to bring about a conviction but there has been more than one man sent to the gallows on circumstantial evidence, and I wish to state that to me the circumstantial evidence since 1926 is sufficient to satisfy beyond a reasonable doubt any fair minded man that there is a conspiracy among a few large corporations to exterminate the independent producer, the independent refiner and the independent distributor in the United States and to create a complete monopoly of the oil business and one of the things that forces me into this belief, when taking into consideration the other matters outlined above is an editorial published in the Wall Street Journal of February 7, 1930, which states about as follows:

That the oil business must go into the hands of a few large corporations, and that while it is not very encouraging to the small producer or small operators, yet there was only one of the two things left for them to do—one would be for them to continue producing if possible under the present conditions, and the other would be to find a possible buyer for their property.

In other words, gentlemen of the committee, let them continue producing until they go broke or find a buyer under distressed conditions.

Following this editorial, Sir Henri Detering, who is at the head of the British owned Dutch Shell Corporation, and one of the largest importers of Venezuela crude and which company is actively acquiring enormous potential and producing territory in the United States and establishing an enormous number of tank wagon and retail service stations in the United States, gave out in an interview in a Los Angeles paper, April 18, 1930, practically making the same statement as the Wall Street Journal.

Now, gentlemen of the Committee, it is my information that the Dutch Shell Co. is controlled by the British Government, and it is my further information that under the laws of the British government that no alien, which means an American as well as others, can own oil territory or pro-

duce crude oil in any British territory, yet this man, Sir Henri Detering, representing a British owned corporation, comes to our country and acquires immense holdings, competing in this country with us in the oil business and then has the unmitigated gall and nerve to tell the independent producer who owns about fifty per cent or more of the oil produced in the United States that we shall step out of the picture.

It seems to me there is nothing left for us but to come to the conclusion that there is a conspiracy on foot to perfect or complete an oil monopoly in the United States and it seems to me that it is the time for our Legislature to pass such legislation as will prevent such a monopoly and protect the State against manipulation and protect the resident independent producer and farm land and royalty owner and the consuming public, and this cannot be done by legislation that hog-ties part of the hogs and not hog-tie all of the hogs.

Now, I have tried to call your attention to the little tricks that can be played in the oil business, and the little tricks that I absolutely know have been played, and cost me in the Borger field right around three hundred thousand dollars. Mr. Mayer over there can tell you that, he knows it, and there are plenty of people in Amarillo that can tell you. I don't advocate prosecuting these companies. In my opinion, they are just simply drunk with power and greed. And I think the time has come when the oil producing States in the United States should stop this manipulation, and that is one of the purposes of the Oil States Advisory Committee, is to bring about an inter-state compact between ten of the oil producing States of the United States which represent about ninety percent of the production. We have held our meetings over the country, and at Texarkana we adopted a platform through a resolution; it is pretty long and I don't want to bother you with it unless you want to hear it. But I want to state that there was represented at that meeting Cicero I. Murray, of Oklahoma, representing Governor Murray; W. H. Cooley, Bakersfield, California, representing the Governor of California; Mark D. Mitchell, Independence, Kansas, representing the

Governor of Kansas; Carl K. Cox, Cheyenne, Wyoming; myself representing Louisiana; T. H. Barton, El Dorado, Arkansas, and Robert R. Penn, Dallas, Texas, representing Governor Sterling. There is seven men representing Governors of different States. We recommend, first, that this committee be continued in existence for the purpose of correlating the activities of the various conservation bodies of the oil producing States, in an advisory capacity, and also make recommendations as to the amounts of oil which should be produced within the United States and as to the prices which should obtain therefor, so as to assure to all producers a fair and reasonable return on their necessary investments in handling their business of mining and producing oil; and also to hold conferences and agree with the major purchasers of crude oil as to quantities of production wanted, and prices to be paid therefor, with due consideration to the various grades of oil in the various fields and the geographical locations and conditions of gathering, transporting and marketing such crude oils; and to handle all other matters treated herein.

Second. That said committee also be empowered to confer with and treat with the major importers of crude oil as imports of crude oil and petroleum products, limiting the same to reasonable amounts with due regard to proration measures in force and to the situation of demand and supply within the United States, so that such imports may not result in the pulling down or destroying of the crude oil price structure in the United States.

Third. That said committee further shall discuss, confer and agree with the various holders of crude oil in storage within the United States as to fair and reasonable schedules of withdrawals from storage of such crude oil, so that such withdrawals may be accomplished in a rational manner without interference with the market for fair amounts of crude oil currently being produced.

Fourth. That in all such negotiations and in the dealing of the various States and National authorities with the oil business it be immediately and widely recognized that a fair price for crude oil is essential to its conservation, so as to prevent wastes of oil from diverting it to

uses below its intrinsic value, to prevent the too rapid exhaustion of underground supplies of crude oil and of the gas energy which is necessary to bring it into the wells and to the surface to prevent the abandonment of countless wells which otherwise would produce large quantities of crude oil that could never be recovered if those wells should be abandoned.

Fifth. That said committee be empowered to proceed with proper negotiations with the President of the United States, the Secretary of the Interior, the Secretary of Commerce, the Federal Trade Commission, the Federal Oil Conservation Board, the Department of Justice, and any or all other agencies concerned therewith to secure a recognition of the fact that it is necessary not only to conserve crude oil but to procure a fair price therefor, in order to prevent abandonment of wells, physical and economic waste and other conditions resulting from the present disturbed situation; in other words, that intelligent and fair control of the production of such a natural resource as oil and gas is necessary not only to the producers thereof, but to the public as well, by preventing the creation and growth of monopoly, with the resultant dangers of high and unfair prices for petroleum products in the not far distant future.

That is a part of it. I wanted to read that to you to show you that is the consensus of opinion of this Committee of the Oil States Advisory Committee, that if there is no legislation through a State compact, legislation with each State that will control production and regulate a minimum price, manipulation goes on and supply and demand has nothing whatever to do with the price. I thank you.

Questions by Senator Woodward:

Q. From your remarks I judge you believe it would not be unwise for a law to be passed authorizing a commission, or creating a commission, in curtailing production to take into consideration the reasonable market value of oil?

A. A commission, the Railroad Commission, or some commission. Yes, sir, that is what we advocate.

Q. You think that in dealing with a conservation problem that such a

rule should be passed enabling the commission to take into consideration the reasonable market demand?

A. Yes, sir. I can't see how you could handle it without some kind of commission. Some legal body should be empowered to regulate the production to meet demand, but I absolutely thing that you will never get anywhere if you do not regulate production to demand. It should be regulated to demand. I haven't read the bill that you have introduced here.

Q. My bill is not intended —

A. I haven't studied it. I was handed a copy of it and I was too busy and didn't have time to read it.

Q. The bill I introduced was not intended to cover that feature. It wasn't intended to permit the Commission to take into consideration the reasonable current demand for oil, and I wanted to get your views as to whether you thought that ought to go in a bill in order to make a complete conservation measure.

A. Senator Gainer has a bill that I have read over. I haven't given it a great deal of study, the amount of study that a man should in order to pass on it, but I have read it over twice,—I think a bill needs lots of studying. There can be lots of jokers in a bill that a man reads just once or twice, even if he is an attorney, trained in the law, he might not catch them. But after reading it over twice I think that bill Senator Gainer has—I think he introduced it yesterday.

Q. It is before the committee now.

A. I think it is one of the fairest I have ever seen. I think you will not save this State from the loss of crude oil at prices that represent its intrinsic value until you regulate production so that there can be no excuses. In other words, pass a law that stops excuses. As fast as you cure one excuse they have got another one.

Q. The bill by Senator Gainer is a bill primarily giving to the Commission the power to regulate production in keeping with the market demand.

A. Yes, sir.

Q. That is all.

Questions by Senator Purl.

Q. Senator Gainer's bill, does it provide the commission shall set a

price on crude at fifteen times—that a barrel of crude shall cost fifteen times the price of a gallon of gas?

A. No, sir, Senator. That bill was introduced by Senator Gainer, I understand, before I came here. I understand that bill has been torn to pieces. One of the men interested in writing that bill,—I myself wired him when I heard his bill had been introduced, I wired him from Louisiana to cut that feature out. I will tell you why I wired him that.

Q. You wired who?

A. The man who wrote that first bill.

Q. Who did you wire?

A. I wired Mr. Ed Mayer,—he sits over there.

Q. Now, I will not discuss that bill if that is not the one pending, but I want to ask you about some of your other testimony.

A. Will you allow me to make a statement?

The Chairman: A substitute bill has been introduced, presented to the committee by Senator Gainer.

A. That is the one I have reference to, the substitute bill. I want to make this statement if you will allow me, so as to set you right on that. I am the one that conceived the idea of passing a bill that would make it unlawful to produce oil, or to purchase oil, or to sell oil at a less rate than a certain ratio, in dollars per barrel as between cents per gallon, or whatever gasoline sold for, less taxes in the State. I originated the scheme. Now, it might be well for this committee to listen to this testimony, this evidence. The way I worked that bill out, I took the Bureau of Mines' figures, and the Oil and Gas Journal's figures, which are very reliable, and I started in on the years, 1923, 1924, 1925 and 1926, which took us over a period of fairly good prices for oil, and then in order to make it fair so that no one in trying to get a bill through could say the ratio was not right, I took in 1927 when the price of crude oil had been cut over the United States pretty close to half of what it was in 1926. Then I took the price of gasoline throughout the United States for those same years, the average price of gasoline and the average price of crude oil, and it figured out the purchasing companies had paid



the producers in the United States about twelve and one-half to one, so I introduced a bill in Louisiana and put it through the Legislature, and Governor Long signed the bill I introduced, at ten to one. In other words, it works automatically, if the big companies want to buy oil at a dollar and a half, they have to sell the gasoline at ten cents a gallon.

Q. Is that the law in Louisiana?

A. It is in the statutes, but it is in the Federal Court. I found out that from 1923 up to and including 1927, that they had paid on an average, a ratio of twelve to one. I think that is good information for this Committee.

Q. Do you live in Louisiana?

A. I do now; I used to live in Amarillo, and I used to live in Beaumont.

Q. You live in Louisiana?

A. I do now. I used to live in Amarillo and in Beaumont.

Q. All right. You live in Louisiana.

A. Yes, sir.

Q. Is your office in Louisiana?

A. Yes, sir.

Q. What is the official name of your company, if it is a company?

A. I have one company I am president of; it is thirty-odd years old—organized in 1901, called the Jones-Haywood Oil Syndicate.

Q. All right. What other?

A. The Jennings Oil Company.

Q. Is that—(question interrupted).

A. Myself and a nephew are in partnership.

Q. What is the name of it?

A. Haywood and Haywood; it is a partnership.

Q. Those companies are incorporated under the laws of Louisiana?

A. Yes, sir.

Q. Where is your home office?

A. At Jennings, Louisiana.

Q. What per cent of your operation is in Louisiana and what per cent in Texas?

A. I have no operations in Texas at all now. I have some royalty in Texas and I own 320 acres. I was over in the Borger field but I saw those conditions and sold out.

Q. Then you will not be affected by any of these conservation bills at present?

A. No, sir, except a very small percentage of royalty that I have

there leased that the Continental is handling; it amounts to about nine dollars a month.

Q. You stated in your testimony a while ago that somebody informed you that they had received a greater price for oil or royalty or something than the farmers in that vicinity.

A. Production.

Q. Now, will you tell the committee who told you that?

A. Well, I would rather not do it.

Q. Well, I will ask you if you have any objection to telling it?

A. I have the objection that this friend of mine—(answer interrupted).

Q. Well, that is all right.

A. It might hurt my friend's business. He is hurt enough as it is.

Q. All right. We are not interested. Have you any objection to telling what company did it?

A. It is the Continental.

Q. All right. Isn't it injurious to hold and put it on proration and reduce the natural flow to a lower or unnatural flow.

A. I didn't get that question, Senator.

Q. I have been asked to ask you if in your opinion it is injurious to a well to put it on proration or reduce the natural flow to a lower or unnatural flow.

A. No, I do not think so.

Q. All right.

A. My opinion is that it might be better for it. It would depend upon the conditions of the oil bearing formations.

Q. I want to ask you—will enforced proration or reduction below the natural flow cause the entrance or water or dissipation of gas?

A. Turned wide open, you mean?

Q. No, just the opposite.

A. Oh, just the opposite. No; I think if you pinch your well down you conserve the gas pressure and prolong the life of the field.

Q. So you advocate a commission to fix the price of oil?

A. A minimum price.

Q. A minimum price? Do you not advocate or do you take the position that if the State does not fix the price the major companies will?

A. Yes, sir.

Q. And you would rather the State would do it than have the major companies do it?

A. I will qualify that by saying

the major companies will, or through manipulation bring about conditions that the other fellow will do it and they take advantage of it.

Q. Are you prepared to give this Committee any testimony or evidence that there is an agreed price on the retail price of gasoline arrived at by the companies prior to posting it?

A. Absolutely not—I don't think anyone could do that.

Q. You don't think that happened at all?

A. I don't say it don't happen. I say there is nobody that can furnish that evidence.

Q. Well, what is your opinion about it?

A. Well, it is the general opinion among the producers.

Q. Well, what is your opinion?

A. My opinion is that they have an understanding.

Q. That they have?

A. I don't think they have any contracts or agreements. I think when it is cut off, one of them does cut off all of them.

Q. I see. How far would you carry your line urging the setting up of a State Commission on price fixing—how far would you carry it into other fields of activity, if any?

A. You mean beyond producing?

Q. Beyond the subject of oil—would you agree that the State of Texas as a public policy could fix prices on other commodities than oil?

A. No, sir.

Q. You think oil only—(question interrupted).

A. Oil and gas.

Q. Are the only industries?

A. Absolutely.

Q. That the prices should be fixed on?

A. For the reason that oil and gas is a one-time crop.

Q. Yes, sir.

A. I don't think you have any right to tell the farmer what he is to get or any other producer, because it is produced over and over again.

Q. Oil is a natural product?

A. Yes, it is a natural resource and when gone it is gone forever.

Q. It is just as necessary to have rubber tires on your car as it is to have gasoline?

A. Yes, sir.

Q. Well, if the Legislature can in good faith advocate fixing the price of gasoline, don't you think we

ought to advocate fixing the price on rubber tires?

A. I don't think so.

Q. Well, why not?

A. Because rubber tires are made out of rubber that is grown from year to year and it can be reproduced again.

Q. I see.

A. It is not a resource.

Q. But oil is the only commodity—(question interrupted).

A. Oh, I would not say that. I would qualify that. I would say that possibly sulphur, if it was being taken from the earth and sold at sacrifice prices, is one.

Q. That we could fix the price on sulphur? How about salt?

A. Well, that might come under that head, but there is so much salt in the county—you can make salt out of salt water and make it out of the ocean. I don't think you will ever see any shortage of salt.

Q. Well, ye haven't any shortage of oil.

A. Not yet, not since 1927.

Q. Would you advocate price fixing on oil as a benefit to the consumer or as a benefit to the producer?

A. A benefit to the consumer, a benefit to the producer, to the land owner, and to the State on its royalty and to the State on its gross production tax.

Q. If the State should fix the price of oil, is it your opinion that we should carry this law at five years—would it have the tendency to raise the price of gasoline to the small Ford owner or lower it?

A. I take this position: There is a vast army of producers in this State that have an enormous amount of money invested in the business and I think they are entitled to stay in the business. It employs labor and puts money in circulation and brings about prosperity, but I do not think that oil should be produced and sold for ten or fifteen cents a barrel.

Q. Are you now selling oil?

A. Yes, sir, I am.

Q. Have you been for the last six months?

A. Yes, sir.

Q. Who are some of your customers?

A. I have a peculiar situation down in Louisiana. The only production I have down there is all my own—that is the Haywood and Hay-

wood partnership—of about one hundred barrels a day. The price is cut by the Gulf Company, which is the only pipe line in the field, to eighty cents a barrel. Well, having lived down there, I knew that the Gulf Company would buy this oil from producers and sell it to brokers and they would deliver it up and down the bayou for irrigating rice fields. So I went to a broker that organized a company composed of farmers who needed oil for internal combustion engines and I made a contract with him for my oil from January 1st to September 1st.

Q. You have not sold any to any of the major companies?

A. Oh, no, I quit them last November.

Senator DeBerry: Mr. Chairman.  
The Chairman: Mr. DeBerry.

Questions by Senator DeBerry.

Q. I am going to ask you this question: You understand that the Texas Company is advocating a proration statute?

A. That the Texas Company is?

Q. Yes.

A. I didn't know that.

Q. Well, do you know whether the Humble Company is or is not advocating a proration statute?

A. I know that Mr. Farish has talked to me a few times on proration and I have read a lot of his articles on proration; I know he is in favor of it. I consider Mr. Farish and Walter Teagle are the fathers of this proration plan since 1926.

Q. Well, by the way of information to you to lead up to another question, Mr. Holmes, who I understand is the head of the Texas Company, has been on the stand here for several hours, and he testified that he was highly in favor of a proration statute, and he thought the statute should have in it that this Commission should have the right to take into consideration any oil produced in excess of the reasonable market demand. You advocate that, do you not?

A. I don't quite get his theory of that. What did you say?

I want to understand the question before answering it.

Q. I will try to make myself clear. Mr. Holmes, of the Texas Company, is for proration.

A. All right.

Q. That will be shown by his testimony.

A. All right.

Q. He advocates a proration bill should have a clause in it giving this commission a right to take into consideration as one of the types of waste any oil that is produced in excess of a reasonable market demand. Do you advocate that?

A. Well, I would answer that by saying this: I do not think there is any living commission that could absolutely regulate production to the barrel to meet demand. That, in my opinion, is a physical impossibility; but I think they can get the nominations of the purchasing companies, and those that are going to require amounts of oil, for periods—get those nominations and set it close enough so as not to interfere with the price structure. I don't think a commission could hold production right to a barrel either way.

Q. I didn't ask you about per barrel.

A. I would not advise that, no. I would advise curtailment, yes, sir; and I would advise that the commission have the power to hold it as near as possible.

Q. Now, the only difference I see in yourself and Mr. Holmes' testimony is he took a good deal of time bragging on the major companies, and then advocating this kind of a bill, and you take a good deal of your time lambasting them, and you both advocate the same bill. If you both advocate the same bill, fundamentally, what is there to keep those big companies from going ahead and outwitting you fellows, like they have been outwitting you?

A. Because what I advocate is, this bill shall provide for laboratory to make tests of these oils, and that one thing would prevent this sulphur content proposition that they have beat many men out of thousands of dollars with. The State could step in and say, "this oil has so much sulphur, so much gasoline, so much in the way of lubricating qualities, and so forth, and we are going to set a minimum price of so much."

Q. If you were to have this laboratory, and you were to run them out from under that sulphur content brush pile, if they are the kind of people you say they are, they will

find some excuse that the laboratory can't find, or get around?

A. Depends upon whether your laws will stick, making it illegal to sell oil under the prices set.

Q. Do you advocate a commission that can set a minimum price on crude?

A. Yes, sir.

Q. If you set a minimum price on crude, and that minimum price is so high that these major companies, including the Dutch Shell—the Texas Company testified that they owned two million acres of land down there in Venezuela on structure—and this commission set this price high enough, those fellows could go down and import oil more cheaply than this price would be. Then what?

A. The cure would be your tariff, and possibly a law taking the charter away from some of these companies importing this oil.

Q. The tariff is an international question, isn't it?

A. Yes, sir.

Q. What if Andrew didn't want a tariff?

A. You would be in a bad fix.

Q. One more question. Do you think that raising the price of gasoline will help a cotton farmer?

A. I don't know whether it would help the cotton farmer.

Q. Sir?

A. I don't see how it would help him, but if he had some oil under his land it would sure help him.

Q. What per cent of the farmers of Texas own royalty interests?

A. I couldn't tell you.

Q. Very small, isn't it?

A. I am sure I couldn't tell you.

Q. If you were representing a district that was engaged in agriculture, and had no oil development in it, and with Hoover prosperity and farm relief of about three million bales, having you flat on your back, and all you could see was that three million bales and six or eight cent cotton staring you in the face, would you vote to give away what little you had to the oil industry?

A. I don't know; I was never placed in that position.

Q. You were never a legislator?

A. No, sir.

Q. If it is fair to the oil industry to set a minimum price, is it fair to we boys that haven't any royalties, and are not interested in oil, for the

Government to set a maximum price on the lubricating oil and gasoline that we use?

A. I think, as I stated in my brief, I think the State should take over this oil business and control it, both to the consumer and the producer.

Q. I will repeat that question. If you think it fair for the State to give the commission a right to set a minimum price on crude for those interested in crude, do you think it would be fair to the man who had no direct connection with those benefits, and he had to buy lubricating oils, fuels oils, and gas, and all those things, do you think that same government in fairness to him ought to set a maximum price on gasoline, fuel oil, fuel gas, and so on?

A. Yes, I think they ought to.

Senator Berkeley: Mr. Chairman.

The Chairman: Senator Berkeley.

Questions by Senator Berkeley.

Q. One question, if you please. You stated you favored the establishment, or the writing into a bill, of a minimum price on crude oil per barrel. Now, there are several fields in Texas—oil fields—and there is a variation in the character and quality of the production in those various fields. Do you mean there would be an arbitrary minimum written directly into the bill, or would it be discretionary with the commission, based on the examinations made in the laboratory as to what the minimum would be here and there?

A. Left with the commission. You could not write anything like that in a bill, because you may find one field that has no gasoline content oil; its oil may be fit only to burn under a boiler.

Q. It may be a variable minimum, then?

A. Yes, sir.

Senator Purl: Mr. Chairman.

The Chairman: Senator Purl.

Questions by Senator Purl.

Q. I want to ask you a couple of questions, please. If the provisions of the Woodward Bill—and we will consider that no other has been introduced for the sake of argument,—if the provisions of the Woodward Bill do not prescribe that the Railroad Commission shall have the right

to take into consideration marketable demand and economic waste, and it does not authorize them to set the minimum like you advocate, and if Senator Woodward does not want that, and Governor Sterling does not want it, and the majority of the Senate does not want it, hadn't we just as well go home as far as relieving the oil industry is concerned, from your standpoint?

A. That is my opinion.

Q. Then, if we do not define economic waste and marketable demand, and add to it that section of Senator Gainer's bill, it is your opinion, as a man who has been in the oil business since 1888, that we will not have solved the problem, or relieved the situation?

A. That is my opinion. Because you would be leaving it to whomever the commission might be influenced by. You would have no minimum price, and you would have no marketable demand set in that bill. They could produce a little more than the market demand and get away from the Commission, and you have your overproduction.

Q. In the light of this opinion handed down today—where it does not touch the constitutionality of putting those in, we will assume we can—but under the present law they stated they cannot do certain things. Now, if we do not splice that law by putting in those things that the Courts say the Railroad Commission had no authority to act on, then we will not relieve that situation?

A. I will answer that this way: There has been an investigation here; there has been information given out about the way the oil business is being manipulated; there have been plenty of producers telling their stories. Governor Sterling has called this session together to pass a conservation law. I think to make good with Governor Sterling, these big companies would raise the price of oil. After you got the Senator's bill over, they would raise the price of oil; yes, I think they would; but how long would they stay there?

Q. That is dealing in economics, pure and simple.

A. Let me go further.

Q. Well, I am not asking you to; but go ahead if you want to.

A. Well, I want to go further. The reason I think that is this:

While we were in St. Louis, I sat beside Mr. Bill Farish, and we were talking about the price of oil being so low, and he made the remark to me that the price of dollar oil was over with. I said, "What do you think the price will go to?" He said, "Probably around fifty cents a barrel; the day has come when we have got to learn to produce this oil a lot cheaper; the day of dollar oil is over with."

Q. That is an economic question. I want to sum it all up with this question: Is it your idea that a model bill to cure or relieve the situation should have as its essential part a clause authorizing the Railroad Commission to take into consideration reasonable market demand and economic waste, and that they should be authorized to set a limited price for oil; is that right?

A. Yes, sir.

Q. And if it does not include that, you think the Legislature cannot by law relieve the situation?

A. I don't think there would be relief to any extent at all.

Q. You do agree that Senator Woodward's bill does not do that?

A. It does not.

Q. And he has stated he is not in favor of that, in substance?

A. Yes. I will answer that question further. I have served notice on the Oil States Advisory Committee, representing Governor Long of Louisiana, that when we meet in Denver in August to settle on a conserving act, that it must include fixing a minimum price.

Q. You stated the Standard Oil of Louisiana had gotten an injunction restraining the operation of that law you had passed there?

A. Yes, sir.

Q. Isn't it a temporary injunction, and the authorities in Louisiana have never attempted to have it set aside?

A. They have not.

Q. Is that an admission that the law is unconstitutional?

A. No.

Q. Is it an admission that the law should not be put in operation?

A. No.

Q. Why is it then that when the Standard of Louisiana got an injunction restraining the State of Louisi-

ana from enforcing the law, the State of Louisiana does not even think enough of the law to ask that the temporary injunction be set aside?

A. Why doesn't the State of Louisiana do it?

Q. Why don't the Attorney General, or the authorities who are charged with championing the constitutionality of the acts of the Legislature do something about it?

A. Because the Attorney General told me that he did not believe that he could go in court and win that case.

Q. Meaning he thought it was unconstitutional?

A. No; he said unless he could get enough producers and witnesses to go on the stand—five or six of them—to show there was manipulation, and a trust that was manipulating prices of crude oil, he could not go in and win the case.

Q. Now, so far as the present administration in Louisiana is concerned, it is a dead letter law, meaning nothing?

A. Yes, sir.

Q. And that is the law you want us to pass.

A. No, no, that is not the law I want you to pass. That law has nothing to do with proration, I don't think that law is proper at all, absolutely no.

#### Questions by Senator Berkeley:

Q. In the setting up of a conservation commission or board is it your opinion that this board or commission ought to be composed of technical experts in the oil business?

A. Yes, sir, I think they should.

Q. You think the entire personnel of that board ought to be technical experts?

A. They should have several years experience in producing oil.

The Chairman: Does any other member have any other question?

Mr. Haywood, I want to express to you for myself and the Committee our thanks for your presence here and your courtesy in coming here.

(Whereupon the Committee adjourned to meet on Monday morning July 27th, 1931, following the recess of the Senate.)

In the District Court of the United States for the Western District of Texas  
Austin Division.

No. 390 Equity.

ALFRED MacMILLAN, Individually, and ALFRED MacMILLAN, Trustee, and MacMILLAN PETROLEUM CORPORATION, Plaintiffs.

Versus

THE RAILROAD COMMISSION OF TEXAS,

and C. V. TERRELL, PAT M. NEFF, LON A. SMITH and A. B. CAPERS, Defendants.

Saye, Smead, Wilson & Saye, of Longview, Texas, Attorneys for Plaintiffs.

C. L. Black, Amicus Curiae. James V. Allred, Attorney General, Maurice Cheek, Fred Upchurch, Assistant Attorneys General, Attorneys for the Railroad Commission.

Morris S. Church, Robert E. Hardwicke, Attorneys for Defendant Capers.

Conrad E. Cooper, Amicus Curiae.

Before Hutcheson, Circuit Judge, and West and Bryant, District Judges.

Hutcheson, Circuit Judge:

This is a suit brought by citizens of another state against the Railroad Commission of Texas, seeking to have declared unreasonable, unjust and void, and to restrain the enforcement of, an order of the Commission issued by that body in April, 1931, as a part of a program first entered upon by it in August, 1930, to put into effect, in the oil fields of Texas, the plan of operation referred to in this suit and generally as "Proration."

Plaintiff, Alfred MacMillan, Trustee, alleges himself to be the owner and operator of certain oil, gas and mineral leases in Gregg and Rusk Counties, in what is known as the East Texas oil fields. That his wells there are capable of producing 50,000 barrels of oil a day. That he has contracted with his co-plaintiff, MacMillan Petroleum Company, the owner of oil refineries, pipe line systems, and other facilities in various oil fields to sell them large quantities of oil, and that Company has in turn contracted with others for delivery to them of large quantities of oil,

interstate and foreign. He alleges that he is operating his properties skillfully and in such manner as to prevent waste, and to cause no injury to producing sands of adjoining properties. That he has been ordered by the Railroad Commission, upon pain of penalties and contempt actions, to desist from operating his wells as he is now operating them, and to reduce the production therefrom to 1455 barrels daily. That to do so he would injure his wells, prevent his complying with the drilling obligations of his leases, thus subjecting him to suit for damages for cancellation and would prevent his complying with his contracts for sale of the oil, subjecting him to heavy resulting losses.

He asserts that the order is void, because (1) depriving plaintiffs of their properties without due process of law, and denying them the equal protection of the laws; (2) It impairs the obligations of contracts entered into by them; (3) It is an interference with interstate commerce; (4) The order rests not upon legislative authority or direction, and has no relation to the conservation of resources or the prevention of their waste, but is a mere arbitrary order designed to control the output, price and market of crude oil by reducing the supply of oil to the demand for it.

Plaintiffs further allege that these orders are being enforced against all operators in the East Texas field; that they are disastrously affecting market conditions in the field, and that adequate relief for plaintiffs requires that orders be enjoined as to all operators in the field. It further alleges that plaintiffs sue for themselves and all others similarly situated who will join therein. The bill concludes with a prayer for temporary injunction pending suit, and for permanent injunction upon final hearing.

Upon the filing of the bill in the Austin Division of the Western District of Texas, the statutory court was formed and the matter came on for hearing before that Court on the application for temporary injunction. That hearing was continued until June 24, at which time upon the understanding that the Court might act upon the application for temporary injunction before it reached its decision on the merits, the matter was on full proofs submitted to the

Court both on the application for temporary injunction, and on the merits.

By these proofs plaintiffs established substantially as alleged, the facts as to his ownership and operation under leases, of the properties in question, the contracts for sale of oil therefrom, interstate and foreign, the fact that the properties were being operated carefully and efficiently, and apart from the proration theory, in accordance with approved operating methods, without injuring the sands of his neighbors. That he was keeping the actual output of his wells greatly below their potential. That the Commission's umpire had given him notice to reduce his production of oil to the amount alleged.

He specifically established the setting on foot by the Commission in conjunction with committees of oil operators, of the proration plan, and the issuance of proration orders for the State of Texas, and for the East Texas oil fields as alleged. He further established in an overwhelming way by the recitations in the order of the Commission of August 14, and November 24, 1930, January 23, April 4, April 22 and April 29 of 1931, by the testimony of Terrell, Chairman of the Railroad Commission, and of members of the Oil Proration Committees, local and Central Advisory, by the testimony of each witness who took the stand, and by letter of R. D. Parker, Chief Supervisor, Oil and Gas Division of the Railroad Commission of the State of Texas,<sup>1</sup> that both the occasion and

Note 1 Railroad Commission of Texas,  
Austin, Texas, May 23, 1931.

TO ALL PURCHASERS AND TRANSPORTERS OF CRUDE OIL IN THE EAST TEXAS FIELDS:

To anyone acquainted with the situation in the East Texas District it seems inevitable that present conditions cannot continue long without completely breaking up proration with consequent disastrous results.

Several things if done would insure success and we confidently believe can and must come from the purchasers and transporters of crude oil who handle the bulk of the production of Texas. Believing this, we insistently urge prompt action in the form of fair offers to buy prorated oil in substantial amounts and as near the posted price as possible and on that stabilized basis only, and immediate offers to make the necessary connections to take the oil. The effect of such course is plain. Some purchasers have been holding back, we understand, to see whether proration is going to work, or for some such reason or fear. It is manifest that if a substantial number stand

and wait, the movement must certainly fail for want of support.

We also earnestly request of the purchasing companies that only oil be purchased which has been produced in conformity with the Commission's order governing proration in East Texas, and we ask that transporting companies refuse to handle any oil not produced strictly in accordance with provisions of our order.

The Railroad Commission, hoping to be of real constructive public service, has given its support to proration as an official duty to perform, and will continue to do so until forced by circumstances to abandon hope of success. We urge you therefore to promptly and effectively move at once or we will be forced to admit failure and abandon the whole plan in Texas.

RAILROAD COMMISSION OF TEXAS,  
By R. D. Parker, Chief Supervisor,  
Oil and Gas Division.

the compelling reasons for the establishment by the Railroad Commission of proration, originally and as now continued were the disrupted and disorderly state of the oil business through the menace of overproduction.

The evidence offered by the plaintiffs and by defendants made it plain that the real genesis of the plan and of the orders in question is to be found, and that they find their effective working only in coping with market demand.

That while the proration orders for East Texas were not based openly, as elsewhere, on nominations by oil purchasers as to the amount of oil they would agree to buy, they were in fact, though covertly, based upon the same compelling consideration, the drastic reduction of output so as to bring it into relation with market demand. The Commission set about to accomplish this result in the field, (1) By fixing a low allowable production for each owner, not per well, but per unit of twenty and forty acres, in effect allowing the same production from each unit, whether it had one or ten wells upon it. Thus with one stroke the Commission limited the output from existing wells, and prevented further development by, in the language of one of the defendants' counsel, "treating the owner as if he were a fool for having drilled four wells, where one would be enough."

(2) After the fixing of the arbitrary allowable for the field, as one of the witnesses testified "so low as definitely to be on the safe side" the Commission set on foot a supplicatory campaign among the purchasers and transporters of East Texas oil, earnestly entreating purchasers to

buy proration oil in substantial quantities, and the purchasers and transporters to boycott all producers not complying with the Commission's order. (Parker's letter, Note 1, supra.)

Plaintiff further established that though there was evidence that the proration plan of ratable and moderate withdrawals would, if properly applied, have some effect to prolong the life of a field by delaying the intrusion of water and thus enable more oil ultimately to be obtained, in the light of present knowledge this was largely theory and speculation, and that such plan could only be properly applied in each field after careful test and experimentation there.

Plaintiff established that the allowable for the East Texas fields was fixed at an arbitrary basis, arrived at without test or experimentation either on plaintiff's property or in the field generally, as to the amount that might be safely withdrawn by each owner from his property without causing any physical waste. He made it clear that the allowable had been fixed arbitrarily and that therefore the plan so adopted and promulgated had the same relation to physical waste as an order not pinching in, but shutting the wells down absolutely would have, differing from such an order not in kind, but only in degree. That the plan was therefore bound to result in arbitrarily depriving plaintiffs of the right to produce their oil in accordance with their prudent judgment and desire, without any precedent finding having been made that the amount which plaintiffs desired to produce would actually cause physical waste. Plaintiffs, in short, established that the only kind of waste which the orders are designed to and do deal directly with, is economic waste, the loss of the market price because of market glut. That such effect, if any, as they might have to prevent not economic, but physical waste, does not come fairly within the purpose or effect of the order, but is a purely accidental incident thereto.

It would serve no useful purpose to burden this opinion with a summary of the evidence upon which these conclusions rest for it in faithful detail but follows that given in hearing after hearing before committees, public bodies and courts in the oil producing states of this country



and daily appearing in countless articles and interviews, inspired and uninspired, upon the condition of the oil industry. Indeed, so importantly has this policy of proration as the cure for market glut been advanced, so currently and so widely debated as a matter of public concern has the necessity for its adoption been, so known to every man, that this Court could fairly have taken judicial cognizance of the matters disclosed by the evidence; that with supply both actual and potential outrunning present demand, those interested in the oil business in this State not only financially, but as a matter of public and general concern have been first by private agreement, and latterly by invoking the aid of the commission, endeavoring to put into effect for the purpose of limiting the supply, some plan of operation which in a way most acceptable to the operators generally, will effect curtailment, and that a general consensus of opinion in Texas has latterly centered upon "proration" as the means effective to this end.

It remains to inquire whether, under the facts found the proration orders in question are invalid, either as an attempt to exercise authority not granted by the Legislature, or if resting on legislative grant, whether they are unjust, unreasonable and void because violative of the Constitutional guarantee to which plaintiffs appeal, or because constituting an unlawful interference with Interstate Commerce.

A word as to the Commission, the source and terms of its authority, and as to the nature and character of a suit against it, will serve to clearly point the basis of our decision.

Created originally for the regulation of railway rates and practices, with authority to make rules, regulations and orders regarding same, its jurisdiction has been latterly extended by Act of the Legislature to the production and transportation of oil and gas. Its rules, orders and regulations while carrying prima facie validity, are yet subject to inquiry at the suit of persons believing themselves aggrieved, the statute, Art. 6036 B providing, "If any person . . . at interest be dissatisfied with any rule, regulation or order adopted by the Commission in pursuance of the provisions of this Act, such dissatisfied party may file a petition set-

ting forth the particular cause of objections thereto in a court of competent jurisdiction in Travis County against the Commission as defendant and such action . . . shall be tried and determined as other civil cases in said Court—In all trials under this section the burden of proof shall rest upon the plaintiff."

Plaintiff's suit then, is not a class suit, but one under the statute in his own behalf, which he is entitled to maintain in the District Court of the United States for the Western District of Texas for relief against the proration orders in question, if they are as to plaintiff, unreasonable and unjust. *Reagan vs. Farmers Loan & Trust Co.*, 154 U. S., 362.

The laws of the State of Texas, enacted to conserve the oil and gas resources of the State, are the source of the Commission's power to make and enforce the orders in question, and to them we must look. Those portions of the statutes pertinent here, defining waste, enjoining the conservation of oil and gas, vesting the Commission with authority over persons drilling and operating oil wells in Texas, and authorizing it to make rules and regulations for the conservation of oil and gas, and the prevention of waste thereof, are Arts. 6014, <sup>1</sup> 6023 <sup>2</sup> and 6029. <sup>3</sup>

#### Note 1.

Art. 6014: "WASTE"—Neither natural gas nor crude petroleum shall be produced, transported, stored or used in such manner or under such conditions as to constitute waste; provided, however, this shall not be construed to mean economic waste. The term "waste" in addition to its ordinary meaning, shall include permitting (a) escape into the open air of natural gas except as may be necessary in the drilling or operation of a well; (b) drowning with water of any stratum capable of producing oil or gas, or both oil and gas in paying quantities; (c) underground waste; (d) any natural gas well to wastefully burn; (e) the wasteful utilization of natural gas; (f) the creation of unnecessary fire hazards."

#### Note 2.

Art. 6023: "JURISDICTION." Power and authority are hereby conferred upon the Railroad Commission of Texas, over all common carrier pipe lines, conveying oil or gas in Texas, and over all oil and gas wells in Texas, and over all persons, associations or corporations owning or operating pipe lines in Texas, and over all persons, associations and corporations owning or engaged in drilling or operating oil or gas wells in Texas; and all such persons, associations and corporations and their pipe lines, oil and gas wells are subject to the jurisdiction conferred by law upon the Commission, and the Commission is authorized and empowered to make all necessary

rules and regulations for the Government and regulation of such persons.

Note 3.

Art. 6029: RULES AND REGULATIONS.—The Commission shall make and enforce rules and regulations for the conservation of oil and gas:

1. To prevent the waste of oil and gas in drilling and producing operations and in the storage, piping and distribution thereof.
2. To require dry or abandoned wells to be plugged in such way as to confine oil, gas and water in the strata in which they are found and to prevent them from escaping into other strata.
3. For the drilling of wells and preserving a record thereof.
4. To require such wells to be drilled in such manner as to prevent injury to the adjoining property.
5. To prevent oil, and gas and water from escaping from the strata in which they are found into other strata.
6. To establish rules and regulations for shooting wells and for separating oil from gas.
7. To require records to be kept and reports made by oil and gas drillers, operators and pipe line companies and by its inspectors.
8. It shall do all things necessary for the conservation of oil and gas whether here especially enumerated or not and shall establish such other rules and regulations as will be necessary to carry into effect this law, and to conserve the oil and gas resources of the State.

Under the authority of the statutes the Railroad Commission has occupied the field assigned to it by making specific rules and regulations governing the drilling for, the production and transportation of oil and gas with a view to preventing waste, as defined in the statutes, and injury to the lands of adjoining owners, and these rules, practices and regulations have been quite uniformly sustained. *Oxford Oil Co. vs. Atlantic Oil Co.* 22 Fed. (2d) 597; *Humble Oil Co. vs. Strauss*, 243 S. W. 528; *Gilmore vs. Straugham*, 10 S. W. (2d), 589; *State vs. Jarmon*, 25 S. W. (2d), 936; *Texas Commission vs. Bass*, 10 S. W. (2d), 586.

Plaintiffs point to the fact that the statutes of Texas have not authorized, but have forbidden the consideration in conservation orders of economic waste, and that no statute has undertaken to authorize as a legitimate method to prevent physical waste, proration or any similar plan. They declare that while the Commission undoubtedly has authority to make reasonable rules and regulations having a real and direct relation to the conservation of oil, and gas, and the prevention of waste, which though limiting the owner in the use of his property are designed for and effective to carry out the

legislative will, the proration orders in question are not such orders. That they were not promulgated to carry out the legislative policy as declared in the statutes, and are therefore not commands of a sovereign state, but mere voluntary attempts on the part of the commission, in association with oil producers, purchasers and transporters of oil, to formulate and establish for the State, contrary to its long-established legislative policy forbidding combinations, agreements and arrangements in restraint of trade, and to affect the prices of commodities, the broad policy of so relating the supply of oil to the demand for it as to bring about and maintain the stabilization of the oil industry, through raising the price of oil both to the producer and the ultimate consumer and keeping it raised.

They say that this was to be accomplished by agreement and persuasion, as far as might be, but when these failed, by having the purchasers and transporters of oil boycott the recalcitrants, and the Commission proceed against them.

Those for the orders declare that the statute authorizing the suit puts upon plaintiffs the burden of proof to establish the unreasonableness of the orders. That until overthrown by such proof they must stand. That the motives, the purposes, the ultimate desires of the Commission, of the oil companies, the oil committees and those who, working with them, have devised the scheme in question, have no bearing upon the validity of the regulation if as applied to the facts which it purports to fit, it validly regulates them. That in short, the Commission might have frankly declared that one of the purposes, or the main purpose, in mind was to reduce supply, if the rule as finally passed has the real and genuine effect to in a reasonable, fair and adequate way prevent physical waste and not the merely accidentally incidental effect, as the result of shutting in production, of effecting some slight reduction in such waste.

Plaintiffs concede broadly that the motives, purposes and intent of the Commission are wholly immaterial if the complained of action is reasonably referable to its grant of powers, the conservation of oil, the prevention of physical waste, and in

operation it has substantial relation to the granted power, even though that operation may accidentally or incidentally effect economic waste, a subject legislatively withdrawn from the Commission. They deny that the Commission, authorized as it was within limits to carry out a conservation policy against waste as defined in the laws of the state, may, departing from that policy, establish a conservation policy of its own of the broadly economic kind in question here, with all the serious complications in which it is involved, the grave consequences which it entails, and make that policy effective against attack by camouflaging with words its real purpose and effect, or by pointing to some result in keeping with its powers which may incidentally or accidentally flow from it. *Siler vs. Louisville & N. R. R.*, 213 U. S. 175; *Minnesota vs. Barber*, 136 U. S. 313; *Brimmer vs. Rebman*, 138 U. S. 78; *Real Silk Hosiery vs. Portland*, 268 U. S. 325.

This is settled law where the validity of legislative acts, state or national, is in question. Presumptively valid though such acts are, courts, bound to give effect not to fictions, but to realities, may not in construing them, close their eyes to what all men can see. Disregarding pretense, subterfuge and chicane, courts must, looking through form to substance, ascertain the true purpose of a statute not from its recitals of purpose, but from the operation and effect of it as applied and enforced. *Smith vs. Ry. Co.* 181 U. S. 248; *Bailey vs. Drexel Furn. Co.* 259 U. S. 20; *Lockner vs. New York*, 198 U. S. 64; *Meyer vs. Nebraska*, 262 U. S. 390; *Henderson vs. Mayor of N. Y.*, 92 U. S. 259; *Chy Lung vs. Freeman*, 92 U. S. 275:

Certainly when a subordinate body like the Railroad Commission of Texas undertakes as here to deal in a broadly restrictive way with the right of a citizen to produce the oil which under the laws of this State he owns, it must be prepared to answer his imperious query, "Is it not lawful for me to do what I will with mine own by joining to a clear delegation of legislative power. This must be found not in the recitative portions of its orders, for the Commission may not more than any other agent, lifting itself by its bootstraps, supply, by claiming, the

power it does not have, but in the statutes themselves, which have created, which control and which are the source of the Commission's power.

Especially must this be so when, as here, under the thinly veiled pretense of going about to prevent physical waste the Commission has, in cooperation with persons interested in raising and maintaining prices of oil and its refined products set on foot a plan which, seated in a desire to bring supply within the compass of demand, derives its impulse and springs from, and finds its scope and its extent in the attempt to control the delicate adjustment of market supply and demand, in order to bring and keep oil prices up.

We have searched, but we cannot read in any legislative pronouncement support for what the Commission has done here. Authorized as we believe it to be to make rules and regulations reasonable and just, having a true and direct relation to the conservation of oil and gas, we can find no authority for its launching upon the policy in question.

This policy of the artificial forcing of prices by governmental action, in cooperation with those in the oil industry interested in raising prices, by either stimulating demand or keeping supply in bounds has never been attempted in this state by the Legislature itself; on the contrary, it has heretofore not only not established such policy, but has forbidden, by positive penal laws, the application of such artificial stimuli through private concert and agreement.

In the light of such long established policy, and of the language of the oil conservation statutes itself, excluding from the statutory definition "economic waste" we think it plain that whether the Legislature could lawfully have exercised this power, either directly or through a delegation of it to the Commission, it has not only not confided the exercise of it to the Commission, but has flatly withheld such power from it.

In short, we believe that the orders in question are unreasonable and void as to plaintiffs because issued in the attempted exercise not of delegated, but of usurped powers. As usurpations, under the authority of the statutes of Texas authorizing this suit, we strike them down.

We find it unnecessary then to, indeed we may not in accordance with established law, inquire into the constitutional questions raised. *Siler vs. Louisville & N. R. R.*, 213 U. S. 175.

Let a decree in accordance with this opinion be prepared and filed.

### NINTH DAY.

Senate Chamber,  
Austin, Texas,  
July 27, 1931.

The Senate met at 9 o'clock a. m., pursuant to adjournment, and was called to order by Lieutenant Governor Edgar E. Witt.

The roll was called, a quorum being present, the following Senators answering to their names:

Beck.	Parr.
Berkeley.	Parrish.
Cousins.	Patton.
Cunningham.	Poage.
Gainer.	Pollard.
Greer.	Purl.
Hardin.	Rawlings.
Holbrook.	Russek.
Hopkins.	Small.
Hornsby.	Stevenson.
Loy.	Thomason.
Martin.	Williamson.
Moore.	Woodruff.
Neal.	Woodul.
Oneal.	Woodward.

Absent—Excused.

DeBerry.

Prayer by the Chaplain.

Pending the reading of the Journal of yesterday, the same was dispensed with on motion of Senator Woodward.

### Petitions and Memorials.

(See Appendix.)

### Committee Reports.

(See Appendix.)

### Bills and Resolutions.

By Senator Loy:

S. B. No. 10, A bill to be entitled "An Act repealing Chapter 185, page 455, Acts of the Regular Session,

Thirty-ninth Legislature, relating to the right of foreign corporations to own stock in and participate in the management and control of domestic corporations; and declaring an emergency."

Read and referred to Committee on State Affairs.

### Senator Excused.

On motion of Senator Moore, Senator DeBerry was excused for the day on account of illness of relatives.

### At Ease.

At 9:08 o'clock a. m., the Senate stood at ease subject to the call of the Chair, on motion of Senator Woodward.

### In Session.

The Senate was called to order at 12:10 o'clock p. m. by Lieutenant Governor Edgar E. Witt.

### Notice of Intent.

Senator Williamson gave notice that tomorrow morning he would offer a resolution to discontinue the hearings of the State Affairs Committee tomorrow afternoon.

### At Ease.

On motion of Senator Woodward, the Senate, at 12:05 o'clock p. m., stood at ease subject to the call of the Chair.

### In Session.

The Senate was called to order at 6:30 o'clock p. m. by Senator Moore.

### Resolutions Signed.

The Chair, Lieutenant Governor Edgar E. Witt, gave notice of signing, and did sign, in the presence of the Senate, after their captions had been read, the following resolutions:

H. C. R. No. 4. H. C. R. No. 5.

### Adjournment.

On motion of Senator Pollard, the Senate, at 6:45 o'clock p. m., adjourned until 9 o'clock tomorrow morning.